

EXHIBIT "D"

ORIGINAL

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ASSEMBLY POINT AVIATION, INC.,
Plaintiff,

- against -

Index No: 1:13-CV-0298

RICHMOR AVIATION, INC.,
Defendant.

The following **EXAMINATION BEFORE TRIAL** of

MAHLON RICHARDS in the above-entitled matter was held pursuant to Notice at **TABNER, RYAN & KENIRY, 18** Corporate Woods, Albany, New York, on Thursday, February 27, 2014, commencing at 9:30 a.m. before Laurel Stephenson, Court Reporter and Notary Public.

A-P-P-E-A-R-A-N-C-E-S:

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ALSO PRESENT:

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I-N-D-E-X

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S-T-I-P-U-L-A-T-I-O-N-S

F-E-D-E-R-A-L

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties, as follows:

All objections, except as to the form of the questions, shall be reserved to the time of the trial.

The within examination may be signed and sworn to before any Notary Public with the same force and effect as if signed and sworn to before the court.

Filing of the original transcript of the examination is waived.

* * *

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(Plaintiff's Deposition Exhibits Numbers 1 through 5 were marked for identification, this date.)

MAHLON RICHARDS,

called as a witness, having been duly sworn, was examined and testified as follows:

BY MR. HENRY:

Q Good morning, Mr. Richards. My name is John Henry. I'm the attorney representing the plaintiff, Assembly Point Aviation, in this lawsuit. I want to ask you some questions regarding the facts underlying the lawsuit. Before I do that, I want to go over some ground rules for your deposition testimony today.

First of all, do you understand that your testimony is under oath here this morning?

A Yes, I do.

Q If you don't understand one of my questions this morning, please let me know that. I'll rephrase the question. If you answer my question, I'm going to assume that you understood what I was asking you.

Do you understand that as well?

A Yes.

Q Please answer my questions orally since the court reporter can't take down a nod or a shake of the

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head, and she'll be sure to remind you of that.

Do you understand that as well?

A Okay.

Q If you need to consult a document today to answer one of my questions this morning, please let me know that, and I'll try to find that document and see if we can help you out to answer that question.

Do you understand that as well?

A Yes.

Q Can you tell me what your educational background is, sir?

A High school.

Q When did you graduate high school?

A 1961.

Q Did you have any formal education after high school?

A No.

Q What's your current occupation, sir?

A I'm the president of Richmor Aviation.

Q How long have you been the president of Richmor Aviation?

A I don't know, probably 1985. I don't know.

Q When was Richmor Aviation founded?

A 1967.

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Q Who was the founder?

A We, at that time, we worked for the company called Kamyr Incorporated --

Q I'm sorry. What was that name?

A Kamyr, K-A-M-Y-R. -- who had a corporate airplane. We weren't utilizing it as much as they wanted us to, so we formed a company to charter the airplane.

Q Who is we when you say "we formed a company"?

A Kamyr and myself and my -- another pilot.

Q Can you describe for me, generally, what your duties are as president of Richmor?

A Well, I try to run the company and oversee as much as I can that's going on, try to control the costs, get some sales.

Q Are you the only shareholder of Richmor?

A No.

Q Who are the other shareholders, generally?

A Pardon me?

Q Generally.

A Generally. My family has some shares and there's some minority shareholders. I think two other minority shareholders.

Q Are you the majority shareholder?

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A Yes, I am.

Q Is one of your duties at Richmor to negotiate and execute contracts on behalf of Richmor?

A Yes.

Q Is there anyone else at Richmor who has responsibility over the negotiation and execution of the contracts?

A The only person I could think of would be the flight school director.

Q What would those contracts be for, would that be for flight instruction contracts?

A Yes, yes.

Q Would that not include authority to enter into contracts regarding the charter or maintenance of aircraft on behalf of Richmor?

A You say would that include?

Q Would it include or not include?

A It would not include.

Q So, is it fair to say that you'd be the only person with authority to enter into contracts on behalf of Richmor for the charter and maintenance of the aircraft?

A Yes.

Q Can you describe for me in the 2002 to 2005

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time period, did Richmor own its own aircraft in addition to having possession of aircraft owned by others?

A Yes.

Q Generally, what aircraft did Richmor own during that time period?

A Primarily would be the flight school aircraft.

Q What types of aircraft are those?

A Majority would be single-engine Cessna airplanes.

Q Did it own any Gulfstream aircraft or any similar aircraft to a Gulfstream?

A In 2002?

Q 2002 to 2005.

A No.

Q Let me ask: At any time, did Richmor own an aircraft to one that's similar to the one at issue here, i.e., a private corporate jet?

A No -- well, you say a private corporate jet?

Q Yes.

A A private corporate jet similar to a Gulfstream or of just any?

Q Why don't you explain that to me. What did

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Richmor own?

A I believe we owned a light jet.

Q What's a light jet?

A It's a, I think, six passenger twin engine jet, and I believe we owned a turboprop. Turboprop being a twin engine airplane that's powered by a turboprop engine.

Q What's the range of a light jet?

MR. RYAN: In miles?

Q In miles, hours, however you --

A Three hours.

Q Three hours. It wouldn't be capable of transatlantic flight?

A It would be capable, but you would have to make stops along the way.

Q How about the turboprop?

A Again, it would be capable, but you'd stop along the way.

Q Okay. Do you know Mr. Phil Morse?

A Yes.

Q How do you know him?

A He's a customer, has been a customer.

Q How long have you known him for, approximately?

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A Twenty-five years.

Q Okay.

A Something like that, twenty-five, thirty.

Q How did you first meet Mr. Morse?

A I was introduced to him by the president of Kamyr Incorporated.

Q Who was that?

A Ed Allard.

Q What were you introduced for?

A Ed thought Mr. Morse was getting to the point of being interested in having an aircraft.

Q Was this while Mr. Morse was working with NAMIC?

A Yes.

Q And that was his company at the time?

A I believe it was.

Q All right.

A Yes.

Q And NAMIC, was there then a time that NAMIC acquired an aircraft for its use?

A Yes.

Q Did Richmor maintain and operate that aircraft?

A Yes.

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Q About when was that?

A 1985.

Q Can you describe for me what kind of aircraft NAMIC had, or if it had multiple aircraft, between 1985 and, say, 2002?

A I believe the first airplane was a De Havilland Hawker, which would be a mid-size jet, and then, later on, they acquired a Gulfstream G-III. That would be the -- at that time, that would be all.

Q How long did Richmor maintain and operate NAMIC's planes?

A I would guess five to seven years, while the aircraft were NAMIC airplanes.

Q Then what happened to the airplanes?

A Well, NAMIC was sold, and we continued to operate, I think at that point it was, the G-III for Mr. Morse.

Q All right. Was that under the name of Assembly Point Aviation, if you know?

A I don't remember.

Q Did Richmor ever charter out the planes that were owned by NAMIC?

A Yes, we did.

Q What were the terms of that charter

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arrangement?

A By terms, what do you mean?

Q Was NAMIC compensated in any way for chartering out the aircraft?

A Yes. If we flew the airplane, then at the end of the month we would remit a bill which would include the revenue for those flight hours.

Q Was Richmor also compensated for those flight hours?

A Yes. We would receive a commission per flight hour.

Q How much was that commission?

A Well, it varied.

Q I don't mean in dollar terms. I mean in percentage.

A Right. Yes. It varied. The standard commission was fifteen percent, but if we did it through a broker, whatever we had to pay the broker would come off the fifteen percent, so sometimes it was five percent, ten percent, fifteen percent.

Q Was there a written contract reflecting that arrangement?

A Yes -- reflecting the commission amount?

Q Yes.

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A Yes.

Q And that's between Richmor and NAMIC at the time, correct?

A While NAMIC was -- had the aircraft.

Q That's correct.

A Yes.

Q Do you have a copy of that written contract?

A I don't know. I say I don't know because I think the contract changed along the way, and I don't remember what the dates were.

Q Okay. Now, there was a point in time when NAMIC was acquired by Pfizer, correct, are you familiar with that, in the 1990s?

A A little bit.

Q Phil had sold off his interest in NAMIC to another company anyway, correct?

A Yes.

Q What happened with the NAMIC planes at that point?

A I think what happened was I think Phil purchased the airplane that was there at that time from NAMIC or Pfizer. I wasn't involved in the dealings, so I don't know for sure.

Q But Richmor still had possession of the

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aircraft, correct?

A Yes.

Q Was that a G-III?

A I believe it was a G-III.

Q Eventually Mr. Morse purchased the G-IV that's at issue in this lawsuit, correct?

A Yes.

Q Were you involved in the purchase of that airplane?

A Yes.

Q How were you involved?

A I went out and found the airplane for him, and after we located the aircraft and showed it to him and he decided to purchase it, then we would, I believe, put in a prepurchase inspection to make sure that everything was okay.

Q This was a used aircraft at that point; is that correct?

A Yes.

Q What's the year of manufacture, is that 1991?

A I think 1999.

Q Okay. Did you serve as Mr. Morse's agent for purposes of buying the aircraft, did Richmor serve as Mr. Morse's agent?

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A Yes.

Q Did Richmor receive a commission on the purchase of the aircraft?

A Richmor was supposed to receive a commission on the purchase of the aircraft. During the negotiations of the sale to Pfizer, I mentioned -- I'm just trying to clarify in my mind which aircraft we're talking.

Q Sure. Take your time.

A There was an airplane that there was a commission due on during the sale of NAMIC to Pfizer that had not been paid. I think I mentioned it either to Dave Gilmour or to Mr. Morse, and the conversation that I had with Mr. Morse was, I don't -- I can't afford to muddy the waters during this purchase, so I'll keep my airplane with you and operate it. You can operate it for me, but I don't want you to talk about a commission.

So what I did is I ended up paying the broker that I was working for, or with, to purchase the airplane. I paid him, I think, over \$100,000 and I didn't -- I didn't collect a commission.

Q Now, are you talking about when Assembly Point Aviation acquired the Gulfstream IV, you paid a

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commission to a third party for that?

A As I said, I'm not sure whether it was -- I think it was the Gulfstream IV or the III. I'm confused. I don't know which one it was, but whatever aircraft NAMIC owned and operated at the time they sold the company to Pfizer there was a commission due. Now I don't know if it was the III or IV. I'm sorry.

Q Okay. Well, the IV was never owned by NAMIC, correct?

A I don't think so, no.

Q And when the IV was acquired, NAMIC had been already been sold off to Pfizer; is that correct?

A I think so. We can find out.

Q We will come back to that.

So, nevertheless, you personally went out and helped locate this aircraft, correct?

A Yes, I did.

Q Did you make a recommendation to Mr. Morse to acquire this particular aircraft?

MR. RYAN: The Gulfstream IV?

MR. HENRY: Yes.

A I probably did, because we did operate other Gulfstreams, and we knew that the G-III had been a good reliable airplane and that generally the IV was

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probably reliable. Now, whether he came to me and said, Mahlon, I want you to go out and find a G-IV or we talked about what the best airplane was, I don't know.

Q Did you have any discussions with Mr. Morse about whether a G-IV would yield a higher charter revenue, Mr. Morse or Mr. Gilmour or anyone else from Assembly Point?

A I don't -- I don't remember.

Q When you were acquiring or when Assembly Point was acquiring a G-IV though, was it your anticipation that Richmor would still receive a commission if that G-IV were chartered out?

MR. RYAN: Objection to the form. You can answer.

Q Do you know what I'm asking?

A The G-IV charters for more than the G-III.

Q And Richmor would still receive a commission on the G-IV if it were to be chartered out, correct?

A If we were managing the airplane, we would receive a commission for the hours flown.

Q Was it your anticipation that Richmor would be managing the G-IV?

A Yes.

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MR. RYAN: Same objection.

Q I'm going to show you a document that's been marked for your deposition as Plaintiff's Exhibit 2.

(The document was handed to the witness, and the witness examined the document.)

Q Exhibit Number 2, is that a copy of the aircraft pilot and management services agreement between Richmor and APA for the Gulfstream IV?

A Yes.

Q That's dated January 22nd, 2001, if you look on the --

A Yes.

Q Were you involved in the negotiation or any discussions leading up to the execution of this agreement?

A I probably would have been.

Q Was there anyone else at Richmor who would have been involved?

A I don't think so.

Q Who prepared the agreement?

A I believe this is the same or similar agreement that we've always used, so I don't know who originally prepared it.

Q When you say "we've always used," what do you

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mean by that?

A Richmor.

Q So this is a Richmor standard form agreement?

A Pretty much standard. It's an agreement that we've used.

Q Did Assembly Point prepare this agreement?

A I don't think so.

Q Did Richmor have an attorney prepare this agreement, or this form, at any point?

A I don't remember how the -- it was originally prepared. I don't know.

Q Had it been in use with Richmor for some period of time before this particular contract was executed?

A Yes.

Q Do you know approximately how long?

A No.

Q Does Richmor use this form with respect to other clients or did it do so at that time?

A Yes.

Q With respect to this particular agreement between Assembly Point and Richmor, this agreement being the pilot and management agreement, can you describe for me what discussions that you had with

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either Mr. Morse or Mr. Gilmour about entering into the pilot and management services agreement?

A I don't recall.

Q Were there ever any drafts of this particular agreement exchanged between Assembly Point and Richmor?

A I don't remember.

Q Do you know if there's any difference in the structure or terms of this agreement and the one that Richmor had with NAMIC?

MR. RYAN: I'll object to the form. You can answer.

A I don't know. I -- I don't think so, but I don't know.

Q As you take a look at the pilot and maintenance agreement, Assembly Point was the owner of the aircraft, correct?

A Yes.

Q And Assembly Point was responsible for all the charters and expenses associated with the aircraft; is that correct?

A Yes.

Q So that would include any maintenance, any repairs, upgrades, hangar charges, correct?

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A Yes.

Q All fuel for the aircraft, correct?

A Yes.

Q Insurance for the aircraft?

A Yes.

Q Any registration, governmental fees for the aircraft were paid by Assembly Point; is that correct?

A Not all. If we chartered the airplane, there's a federal excise tax due. We collect it from the customer and paid the government.

Q Do you also have to pay a fee to the FAA for registration of an aircraft?

A Yes.

Q Forgive me, I have no knowledge of the aviation industry.

A Twenty-five dollars.

Q Twenty-five dollars to register a jet?

A Yes.

Q So, what, about a third of what I pay for my car; is that correct?

Okay.

A And you only do it once.

Q And only do it once. Okay.

Assembly Point was also responsible for

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payment of the flight crew salaries; is that correct?

A Yes.

Q Including pilots, correct?

A Yes.

Q Assembly Point also was responsible for paying for training the pilots, correct?

A Yes.

Q What expenses related to this aircraft were paid for by Richmor?

MR. RYAN: This aircraft, the Gulfstream IV?

MR. HENRY: Yes.

Q Did Richmor ever pay any expenses for this aircraft?

A The expenses that we paid for the aircraft, which we paid all of them, we would bill at the end of the month to Assembly Point.

Q Then Assembly Point would pay all those expenses?

A Yes, correct.

Q They weren't borne by Richmor, correct?

A Only until we got paid.

Q All right. Can you describe for me how the insurance was paid for? In whose name was the

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insurance policy? Was it in Richmor's name?

A The basic policy would be Richmor's name and the different aircraft owners that were on the policy would be named.

Q As additional insureds?

A As --

Q Or as insureds?

A As insured, I think.

Q Were there separate policies maintained for each aircraft or was there a global policy in which each aircraft was placed on?

A Global policy and the registration numbers would be listed on the policy.

Q How was that cost allocated or passed on to the owners?

A Well, the underwriter or the broker would tell us how much each airplane cost. That cost was passed onto the customer.

Q All right. Regarding the maintenance of the aircraft, did Richmor employees do the maintenance on the aircraft or do you use subcontractors or how does that work?

A Well, we would have done most of the maintenance on the aircraft that we were capable of

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doing. If there was something that we were not trained to do or capable of doing it, we'll sub it out to another company.

Q What were the areas that you would sub out to another company?

A An example might be an engine overhaul.

Q Anything else?

A If there was an inspection that required, let's say, an NDT inspection, which is a nondestructive testing, there are companies that specialize in that, and they would come to our facility and do the x-rays.

Q If you did have to pay a subcontractor to perform maintenance on the aircraft, that cost will be passed along to Assembly Point, correct?

A Yes.

Q Did Richmor markup the subcontractor bills or the contractor bills?

A I don't -- I don't think we did. I think we included the bill with the --

Q By markup, I mean did you add a profit and an overhead component on to the bill from the subcontractor?

A I don't believe we do, no.

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Q The pilots and crew, those were Richmor employees; is that correct?

A Yes.

Q But the salaries themselves were paid for by the owner of the aircraft?

A By the owner of the airplane that they were assigned to, yes.

Q Can you describe for me how that was handled? Was there a dedicated pilot for a particular aircraft or pilots? How did that work?

A We dedicate pilots to specific airplanes, sometimes because that's the only airplane that they're trained to fly, but we have a pool of pilots that we occasionally use because people have to go to training a couple times a year. Most of our pilots are long-time employees, so they're entitled to three-week's vacation. We still have to fly the airplane while they're in school or training or on vacation, so we put in other pilots.

Q But, nonetheless, they're actual Richmor employees, correct?

A Yes.

Q And then the cost for their salaries just gets passed to the owners; is that correct?

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A Explain -- try -- are you talking about the assigned pilots? Are you talking about the pilots that we use when the assigned pilots --

Q I'm talking about the assigned pilots.

A Okay. Yes.

Q You simply pass the cost of their salaries on to the owner of the aircraft, correct?

A No.

Q All right. How does that work?

A The arrangement is, is that we pass the salary and benefit cost on to the owner and we add a five percent administration fee for handling all of the, you know, the check writing and the benefit -- the things that have to be done.

Q Okay. If you have Exhibit 2 in front of you, can you take a look at Section 6.2 of the agreement. You'll see there's a salary rate in there of \$29,815 per month during the term of this agreement, three pilots and one cabin attendant. Do you see that?

A Yes.

Q Was that rate ever changed or increased during the term that Richmor had possession of this particular aircraft?

A I don't know. I guess I would assume that it

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changed seeing it was over a long period of time, but --

Q So --

A -- things -- things --

Q This is 2001.

A I'm just thinking that there was a time where the economy wasn't very good and there weren't a lot of raises. I'd have to go to payroll to...

Q But, otherwise, if the Richmor employees received raises, there would have been an increase in the salary charge to the owner, correct?

A I would think so.

Q So between 2001 and 2007, let's say, before the economy collapsed, would it be fair to say that the Richmor employees would have received some raises?

MR. RYAN: Objection to the form. You can answer if you know.

A We can assume that. I can't state that for sure without checking with payroll.

Q If they did receive raises, that would have resulted in a change to the salary rate that's in the contract, correct?

MR. RYAN: Objection to the form. You can answer.

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A Yes.

Q Was there ever any writing between Richmor and Assembly Point reflecting a change in the salary rate? Was there ever a written agreement signed by Assembly Point and Richmor for any change in the salary rate?

A Not that I'm aware of.

Q There is also, if you look at Section 6.3, a rate specified for hangar rent. Do you see that?

A Yes.

Q I'm sorry. Six point four is hangar rent. Do you see that: \$4,200 per month?

A Yes, I do.

Q Was that rate ever changed while this contract was in effect?

A Yes.

Q Was it increased?

A Yes.

Q Was there a written agreement signed by Richmor and Assembly Point reflecting that increase in the monthly rent charge for the hangar?

A There was a change in the rate at the request of Assembly Point. They wanted the airplane to be located some place other than New York State.

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Q All right. Was there a written agreement signed by Assembly Point and Richmor reflecting that change in rate?

A Not that I'm aware of.

Q That was done orally?

A It was orally.

Q And the plane was moved to Connecticut?

A Yes.

Q Do you know what year the plane was moved to Connecticut?

A No.

Q Sometime in the mid-2000s?

A Yes.

Q If you look at there's a Section 8.1, which required Richmor to provide invoices by the 15th of each calendar month. Do you see that?

A Yes.

Q Did Richmor always provide its invoices by the 15th of each calendar month?

A I -- I don't know. I -- I did not prepare the invoices. I think my people probably tried to do that. I don't know.

Q That would be the 15th of the month following the month in which the charges were incurred; is that

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correct?

A Yes.

Q Do you know of any instance in which the invoice wasn't provided by the 15th of each month?

A I don't know personally, no.

Q If you look at Section 9, there's provisions there relating to the creation of an operating account. Do you see that?

A Yes.

Q Was there ever an operating account established for Assembly Point for this particular aircraft?

A No.

Q Do you know why that Section 9 is in the contract?

A Most management companies charge, I believe, a two-month operating account so that when they are paying all the bills for the aircraft owner during the month, they've got something to pay with. As you see in this contract, it says zero. We elected not to do this.

Q Was this just a holdover from the form contract that Richmor had?

A Yes.

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Q Why did you not elect to have an operating account requirement for Assembly Point?

A I don't know.

Q Would it have been based on the fact that you had a prior relationship with the owners of this aircraft?

A It could have.

MR. RYAN: Objection to form.

Q If you look at Section 12.1, there's a requirement to maintain -- for Richmor to maintain \$100 million in insurance coverage for this aircraft and its operations. Do you see that?

A Yes.

Q Was that coverage amount ever changed?

A It may have been.

Q Why do you say that?

A Because I can recall customers who wanted more than 100. We -- we -- we decided that we wanted at least a minimum of 100, but there were customers that decided they wanted more.

Q When you say "we," what do you mean by that?

A Richmor.

Q Wasn't this a requirement for you to maintain that coverage?

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A It was our policy. It was a Richmor policy.

Q Are you aware of any written agreement changing the amount of that coverage?

A No.

Q If there was any change to the amount of that coverage, would that have been oral?

A Yes.

Q If you look at Section 12.2, that requires Richmor to maintain \$24 million in insurance, aircraft hull insurance coverage. Do you see that?

A Yes.

Q Was that amount ever changed?

A I don't know.

Q Are you aware of any written agreement under which that amount was changed?

A I don't know that it was changed.

Q Are you familiar with the -- I don't know if they're called FARs or F-A-Rs, the Federal Aviation Regulations, Part 135 of the FARs -- and please correct me if I'm misusing the terminology.

A Sounds okay so far.

Q Okay. Is Part 135 of the FARs and Part 91 of the FARs --

A Yes.

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Q -- is it fair to say you're familiar with those requirements?

A I'm familiar.

Q Can you tell me what Part 91 of the FARs is, generally?

A It would be non-commercial flying of the airplane.

Q Okay. And what's the difference between Part 91 and Part 135?

A Part 135 would be flying commercially or for hire.

Q Are there more stringent requirements for Part 135 flights as opposed to Part 91 flights?

MR. RYAN: Objection to the form. You can answer.

A Yes.

Q In what ways?

A Part 135 would require a maximum duty day, a maximum flight day.

Q And what do those mean?

A Means that the number of hours that you're allowed to work after a rest period and the number of hours you're allowed to fly during a period of time.

Q Okay. Are there use limitations on the

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aircraft itself as opposed to the pilots or the crew?

MR. RYAN: Within those regulations?

Q Within those regulations.

A Are you saying are there limitations on the aircraft?

Q Yes.

A Are you asking can an airplane fly -- is it required to fly a certain number of hours?

Q Or not fly a certain number of hours?

A I'm not familiar with any regulations that say an aircraft can't fly as much as -- no.

Q Okay. Is there any requirement for a maintenance or inspection after a certain number of hours?

A Yes.

Q Where is that requirement? Is it in Part 91 or Part 135 or both?

A Neither.

Q Where is that requirement?

A That would be in maintenance regulations.

Q Okay. Are Part 91 and Part 135, are those use regulations would you describe them as?

A They're more requirements on the flight crew, the way a flight crew would operate.

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Q I'll show you what's been marked as Exhibit Number 3 for your deposition today, which is an aircraft lease agreement dated January 22, 2001; is that correct?

(The document was handed to the witness, and the witness examined the document.)

A Yes.

Q This was entered into at the same time as the maintenance and pilot agreement that we were just discussing?

A Yes.

Q What was the purpose of the lease agreement?

A The lease agreement is -- gives us the ability to lease the aircraft for 135, Part 135.

Q Lease the aircraft to third parties, correct?

A Yes, yes.

Q If the aircraft were leased to third parties, what would Assembly Point receive and what would Richmor receive?

MR. RYAN: According to the terms of this agreement, John?

MR. HENRY: Yes, or otherwise.

MR. RYAN: Why don't we take it first. There's two questions.

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MR. HENRY: Let me ask the question.

MR. RYAN: Okay.

Q So, under this agreement, if an aircraft were leased to a third party, what would Richmor receive and what would Assembly Point receive?

A Richmor would receive fifteen percent, plus or minus, depending on whether it was through another broker, for each flight hour, each hour that the aircraft was flown, and Assembly Point would receive 85 percent of the revenue for each hour flown.

Q Okay. Would you have any flights of this or use of this aircraft that were not covered by the lease agreement?

A Ask that again.

Q Did Richmor have any use of this aircraft that were not covered by this lease agreement?

A I -- I'm not sure what you're asking me. We -- if we flew the airplane, I'm assuming it was covered by the agreement.

Q What if you didn't fly the airplane, was it covered by the agreement?

MR. RYAN: I'll object to the form.

A Well, if we didn't fly the airplane, nothing happened.

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Q Well, if you received money for not flying the airplane, something happened, correct?

MR. RYAN: Objection to the form.

A Well, we generally don't receive money unless the airplane flies.

Q In this case, you received money for the airplane not flying, correct?

A In which case?

Q In your case.

A Oh, okay. Yes.

Q Was that covered by this agreement?

A I would guess. I'm -- I'm not sure exactly what you're asking.

Q Well, I'm asking, if Richmor received money for not using this aircraft, was that situation covered by this agreement?

MR. RYAN: Objection to the form.

Q In your view, in your understanding?

MR. RYAN: Objection to the form.

A I -- I don't think we received any money for this airplane not flying.

Q You don't think you received any money for this airplane not flying?

A That's correct.

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Q Well, we'll come back to that point.

A Okay.

Q All right. Who provided the lease agreement that's in front of you?

A Richmor.

Q And Richmor prepared it?

A I don't know.

Q Well, Assembly Point didn't prepare it.

A That's correct.

Q All right. And Richmor provided it to Assembly Point for its review and execution; is that correct?

A Yes.

Q Were there any drafts of the agreement exchanged?

A I don't know.

Q Have you looked in your files for any drafts of the agreement?

A No.

Q Were you asked to do that in connection with responding to discovery in this litigation?

A We were asked to provide the agreement.

Q Were you also asked to look for any drafts of the agreement?

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A I don't recall.

Q Did Richmor use this form with respect to other aircraft that it had possession of?

A Yes.

Q And what other aircraft?

A Other aircraft that Richmor -- Richmor would have managed.

Q In the 2001-2000 time period, approximately how many aircraft was Richmor managing?

A I recall around 25 to 30.

(Discussion off the record)

BY MR. HENRY:

Q In the 2001-2002 time period, in which this agreement was executed, how many aircraft did Richmor have under its management?

A Twenty-five to thirty.

Q All right. Thank you.

If you look at Section 1.1 of the agreement, it says that, "Owner agrees to lease to Air Services Provider, and Air Services Provider agrees to lease from Owner, the Aircraft, on an "as needed" and "as available" basis."

Do you see that?

A Yes.

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Q What does that mean, the as needed and as available basis?

MR. RYAN: Objection to the form. You can answer.

A I -- I would guess it means that we could use it if it was available.

Q When you say "we could use it," what do you mean by that?

A That Richmor could use the airplane if it was available.

Q Meaning not being used by the owner?

A I guess you could read that into it.

Q If you look at Section 1.3, captioned "Non-Exclusivity," do you see that?

A Yes.

Q And it says that, "Air Services Provider and Owner acknowledge and agree that the Aircraft is leased to Air Services Provider on a non-exclusive basis."

What does that mean?

MR. RYAN: Objection to the form. You can answer.

A Just what it says.

Q What does the term non-exclusive mean in your

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mind?

MR. RYAN: Objection to the form. You can answer.

A Non-exclusive.

Q Does it mean that the owner could also use the aircraft?

MR. RYAN: Objection to the form. You can answer.

A The owner can use the aircraft.

Q And the owner could lease it out to third parties as well?

A Yes, he could.

Q But if it --

A Or he --

Q Go ahead. I'm sorry.

A We would lease it out to third parties, I guess.

Q Couldn't the owner also lease it out or charter it out on its own?

A No.

Q But the owner could refer a customer to Richmor, correct?

A Yes.

Q If you look at Section 2.2 of the agreement

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which is captioned "Scheduling," do you see that?

A Yes.

Q If you look at section b, it says, "Owner and Air Services Provider agree that the availability of the Aircraft for use by Air Services Provider would be subject to availability and subordinate to the scheduling requirements of other lessees."

Do you see that?

A Yes.

Q What does that mean in your mind?

MR. RYAN: Objection to the form. You can answer it.

A I'm not sure what that means.

Q Well --

A Other lessees --

(The witness examined the document.)

A I don't know. To other customers?

Q Doesn't that mean that -- well, let me ask you this: Air services provider is Richmor, correct?

A Yes.

Q Richmor's use would be subject to availability and subordinate to the scheduling requirements of anyone else, correct?

MR. RYAN: Objection to the form. You

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can answer.

A Our use of the aircraft would be subject to availability of the scheduling requirements of other lessees?

Q Doesn't that mean that Richmor's use was subordinate to someone else's use, correct?

MR. RYAN: Objection to the form.

A I think it would be subordinate to the owner's use.

Q If you look further on in Section 2.2(b), did the lease agreement require Richmor to present "prospective charter flights to Owner for prior approval and Owner's sole discretion"? Do you see that?

A Okay. Ask me the question again, please?

Q Was Richmor required to present to Assembly Point prospective charter flights in advance?

A I -- I don't see here that we were required to do that, but we always checked with them.

Q Okay. The contract says that, "Air Services Provider shall present flight scheduling requirements for prospective charter flights to Owner for prior approval and Owner's sole direction as far in advance of the date of the proposed charter flight as is

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reasonably practicable."

A Which one are you reading?

Q Section 2.2(b).

A C?

Q B.

A Oh, I'm sorry. I'm looking at C.

Q If you look at 2.2(b), the second sentence.

A Okay.

(The witness examined the document.)

A Okay.

Q So my question is, under that clause, was Richmor obligated to present prospective flights to Assembly Point before the charter?

A Yes.

Q And Assembly Point had discretion to refuse a charter?

A Yes.

Q Was that provision followed in your experience, in other words, during the course of this contract did Richmor present prospective charter flights to Assembly Point for its approval?

A I believe we did. That would have been done by the dispatchers but, yes, I would say yes.

Q How was that done?

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A By phone.

Q So can you describe that for me, what do you mean by phone, what would happen?

MR. RYAN: The progression?

MR. HENRY: Yes.

A We would get a request for the aircraft, to charter the aircraft, the dispatcher would call Assembly Point's person and say, we want to charter the airplane next Wednesday, Thursday, Friday. Is Mr. Morse going to use the airplane?

Q Okay. Would the dispatch person tell Assembly Point or its representative who was chartering the airplane?

A Not necessarily, no.

Q Now, if you look at the Section 2.3 of the agreement, it provides for a minimum charter rate of \$5,100 per flight hour. Do you see that?

A Yes.

Q Was that charter rate ever changed?

A Yes.

Q What was it changed to?

A Well, in the contract that we're talking about, 4,900.

Q Were there other situations in which that

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charter rate was changed?

A Not that I recall.

Q Are you aware of any written agreement between Assembly Point and Richmor under which the \$5,100 rate in this contract was changed?

A No.

Q If you look at Section 4.2, that required the plane to be operated under either Part 91 or Part 135 of the FARs; is that correct?

A Yes.

Q There were certain flights that were operated by SportsFlight Air that are at issue in this case, right?

A Yes.

Q Were the SportsFlight Air flights in compliance with Part 91 or Part 135 of the FARs?

A Yes.

Q They were?

A I believe they were.

Q Did you maintain documentation to establish that those flights were in accordance with Part 91 or Part 135 of the FARs?

A We would have maintained a flight log per every flight.

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Q The flights operated by SportsFlight Air, would they have been governed by Part 135 as opposed to Part 91?

A No.

Q Would they have been governed by both or how would that work?

A Part 91.

Q Part 91. Okay.

There is also a provision in Section 4.2 requiring that the aircraft not be operated in any area excluded from insurance coverage. Do you see that? It's the --

MR. RYAN: Second to last line.

Q -- second to last line.

A Okay.

Q Was this aircraft ever operated in any area excluded by insurance coverage?

A I believe our insurance policy was worldwide.

Q Do you know that for a fact or --

A I'd have to look at --

Q -- what are you basing that on?

A I'd have to look at the policy, but that's my recollection.

Q Were there any areas of the world at all, to

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your knowledge, that were excluded from coverage under your insurance policy?

A Not that I'm aware of. I think worldwide meant worldwide.

Q Have you looked at your insurance policy recently to determine that?

A No.

Q All right. So you believe that it would cover the aircraft in places like Pakistan or Cuba or, for that matter, North Korea?

A Worldwide is -- they're part of the world, so I would say yes.

Q All right. After we're done with this deposition, I'm going to make a request that we be provided with a copy of the relevant provisions of your insurance policy so we can take a look at that. I'll make that request of your counsel.

A Okay.

Q If you look at Section 9.1 of the agreement entitled "Notices," do you see that, sir?

A Yes.

Q That required that "All communications, declarations, demands, consents, directions, approvals, instructions" -- et cetera, required under

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this agreement be given in writing and to be delivered by hand, registered mail, return receipt requested, or overnight delivery, facsimile or other wire transmission. Do you see that, sir?

A Yes, yes.

Q All right. Was that followed during the course of the parties' relationship? If you needed consent from Assembly Point to do something, for example, charter the aircraft, did you make a -- require them to provide a written consent to that activity?

A Every time they chartered -- the airplane was chartered?

Q Yes.

A No.

Q How about in any other instance? If you needed Assembly Point's consent to do something with the aircraft, did you require them to provide a written consent?

A Such as?

Q Well, was there any time in which you required Assembly Point to provide a written consent to do something with this aircraft?

A Not that I'm aware of, no.

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Q If you wanted to make improvements of any significance to the aircraft, what would you do?

A We would ask or suggest to them.

Q And you'd do that with a phone call?

A Yes, normally with a phone call.

Q If they orally consented and said it's okay, you would go ahead and do that?

A If it was okay with them.

Q I'm going to show you a document that's been marked for your deposition as Exhibit Number 5 this morning, which is --

MR. RYAN: Your 5?

MR. HENRY: Yes.

Q Is that a copy of the contract that Richmor entered into with SportsFlight Air?

(The document was handed to the witness, and the witness examined the document.)

A Yes.

Q And that was on June 14th, 2002; is that correct?

A Yes.

Q Can you describe for me how that contract came about?

A SportsFlight Air -- well, somebody contacted

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us -- I'm assuming it was SportsFlight Air -- and said that they had some flying to do for, I guess, DynCorp and wondered whether we were interested in doing it.

Q Who contacted you?

A I think it would have been Don Moss.

Q Do you know an individual by the name of -- and I'll probably mispronounce this name -- Meta Buttenheim?

A Yes.

Q Am I pronouncing it correctly?

A Meta.

Q Is that a woman?

A Yes.

Q Do you recall if she contacted you at all about this opportunity?

A She would have been part of the contact, yes.

Q Who is she?

A She's a broker, charter broker.

Q Is she also located in Columbia County?

A Yes.

Q Did you know her before being contacted with respect to the SportsFlight Air opportunity?

A Yes.

Q How did you know her?

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A At one time, she was an employee of Richmor Aviation.

Q When was that?

A Sometime in the nineties.

Q Do you know when she left employment with Richmor?

A No, I don't.

Q Can you describe for me the circumstances under which she left employment from Richmor?

A I don't understand what you mean: The circumstances.

Q Did she quit? Was she fired?

A Oh, no. She resigned. I guess that's quit.

Q Okay. How about Mr. Moss, did he contact you at all about this opportunity?

A Yes.

Q Do you know who the first contact was from?

A I would think that the first contact would have been Meta. We did flights for Meta previous to this contract, so I would think Meta probably would have been the first contact.

Q When you say you did flights for Meta before this contract, what do you mean by that?

A Well, she's a charter broker, so occasionally

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she would call looking for flights.

Q Did you also do flights for the government before this contract?

A I think we may have done one.

Q I'm going to show you what's been marked for your deposition as Plaintiff's Exhibit 4 this morning.

(The document was handed to the witness, and the witness examined the document.)

Q If you look at the first page of Exhibit 4, it references -- first of all, can you tell me what Exhibit 4 is?

MR. RYAN: It's many pages, so.

Q All right. Well, let's just take the first page. It appears to be a letter from the Department of State dated January 9, 2002; is that correct?

A Yes.

Q And this references a flight being conducted on the G-IV. Let me ask you this: There's a reference to a G-IV with the registration number N83VM. Do you see that?

A Yes.

Q Operated by Assembly Point; is that correct?

A Yes.

Q Do you believe that's a mistake in the

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registration number?

A Yes.

Q All right. Should be N85VM?

A Yes.

MR. RYAN: Did -- okay.

Q So this references a flight or a mission from January 9th to January 31, 2002. Do you see that?

A Yes.

Q So was Assembly Point's aircraft used by the government for purposes similar to the SportsFlight Air uses before the SportsFlight Air contract was entered into? Do you know what I'm asking?

MR. RYAN: Objection to the form.

Q Let me rephrase that. Was Assembly Point's aircraft, the G-IV, used by the government prior to the SportsFlight Air contract?

A I would say that we did one flight, I believe.

Q That was for a 22-day period?

A That's what it says. I'd have to look at the flight logs.

Q All right. So had somebody contacted you about doing flights for the government prior to January of 2002?

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A Not that I recall, no. Prior to?

Q Well, at this point, January 2002, Richmor had sole possession and control of the aircraft, correct?

A Yes.

Q All right. So, if the government were using the plane in January 2002, that would have been through Richmor, correct?

A Yes. Oh, I thought you said prior to January 2002.

Q I am talking about prior to January 2002 because it looks like it was leased out in the beginning of January 2002. Do you recall being contacted at the end of 2001, early 2002 about doing flights for the government?

A No. The contact would have gone to the charter department anyway.

Q Regardless of the length of the charter?

A Yes.

Q So, in any event though, you were, at some point, contacted by Meta and Don Moss about flights that ultimately became the SportsFlight contract, correct?

A Yes.

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Q All right. When you were contacted, did they describe the type of aircraft that they were looking for?

A Yes.

Q What did they tell you?

A It -- that it would depend on the mission. Some of them would require a longer range aircraft than other, depended on the mission, but they were generally talking about Gulfstream airplanes.

Q How many Gulfstream airplanes did Richmor have at that time?

MR. RYAN: In 2002, John?

MR. HENRY: Yes.

A Six or seven.

Q Were they G-IIIs, G-IVs or G something else's?

A I think, my recollection says, there were three G-IVs, three G-IIIs, two G-IIs. Might not be 100 percent accurate. It's a long time ago.

Q Fair enough. That's perfectly fine.

Did you contact any of the owners of any of the other Gulfstream aircraft about entering into a charter arrangement for their aircraft?

A At what time?

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Q In 2002.

A I don't think so. There may have been some conversations, but I don't think so.

Q Did anybody from SportsFlight Air or Meta Buttenheim or Mr. Moss come up to look at any of the aircraft?

A Not that I recall.

Q All right. Did they tell you what they were going to do with the aircraft?

A They told us what it would be flying government people.

Q Do you have any discussion about the range of the flights or how long the aircraft would be tied up for?

A They would have told us some of the places that they were probably going to go to. Don't know that we really talked about how long the particular flight was going to be.

Q How about what time period that they were going to need the aircraft for or need to have the aircraft available for?

A Twenty-four/seven.

Q For how long?

A For five or six months.

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Q Was there ever any discussion about whether the aircraft needed any additional equipment for the government's use?

A No.

Q Do you know whether there was ever any additional equipment installed in the aircraft for the government's use?

A Not that I recollect. By additional equipment, what do you mean?

Q Well, was there any -- this is more for you as an aviation person. Is there anything that would have been necessary to upgrade the aircraft for longer flights or for longer distances or to travel into different parts of the world, anything like that?

A No. The airplane was fully equipped to go anyplace in the world, whether it was the G-IIIs or G-IIIs or G-IVs, they were all equipped to fly most any place.

Q Are there any navigational systems that may be specialized to particular places of the world?

A No, not that I'm aware of, no.

Q Now, did there come a time that you presented this opportunity to Mr. Morse or Mr. Gilmour or someone from Assembly Point?

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A Yes.

Q Can you describe for me how that came about?

A When SportsFlight indicated that they might want to do this on a longer term basis than just one flight and they were looking to have the aircraft and crew available 24/7, at that point I probably would have called Dave Gilmour to see if there was any interest in doing that because that would make the aircraft not available for the owner.

Q Do you recall meeting with Mr. Gilmour and Mr. Morse to discuss this opportunity?

A I don't, no.

Q But you recall there were some conversations to that effect?

A Yes.

Q You just don't recall whether they were by phone or in person?

A My recollection is they were by phone. I don't ever recall meeting as it relates to this, no.

Q Did you take any notes of any of your conversations with them about this opportunity?

A No, no.

Q Do you recall exchanging any e-mails with them about this opportunity?

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A I don't think at that point I knew what e-mails were.

Q Fair enough. Did you make any recommendation to them about whether they should enter into this opportunity?

A I told them that this might give them more hours of flight revenue.

Q Did they express to you any concerns about being able to use the plane?

A Yes.

Q And what did they say?

A Well, they wondered whether it would be available at any time for their use.

Q And what did you tell them?

A I -- I don't remember exactly what I told them. They knew that we were going to be on call 24 hours a day.

Q So, what if Mr. Morse was using the plane and the government needed it?

A We would use another one of our airplanes.

Q Okay. But otherwise, this plane had to be available to the government's use 24 hours a day 7 days a week?

A An airplane needed to be available 24/7, an

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airplane.

Q And --

A And a crew.

Q If you look at Exhibit 5, which is the SportsFlight Air contract, where does it say that an airplane needed to be available?

A Well, I don't see it going through this agreement quickly.

Q The contract that's in front of you between Richmor and SportsFlight is a contract for the charter of a Gulfstream IV aircraft, registration N85VM, correct?

A Yes.

Q That is Assembly Point's aircraft?

A Yes.

Q When you presented this opportunity to Mr. Morse and Mr. Gilmour, did you have any discussion with them about the fact that the contract was going to require a certain number of minimum hours per month?

A I -- I don't recall exactly. I probably mentioned that our contract with Assembly Point was supposed to be around fifty hours a month.

Q With SportsFlight you mean?

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A With -- I'm sorry -- with SportsFlight Air.

Q Did you ever tell Mr. Morse or Mr. Gilmour or anyone else from Assembly Point that they weren't -- strike that.

Before entering into the contract with SportsFlight Air, did you ever tell Mr. Morse, Mr. Gilmour, or anyone else from Assembly Point, that they would not be entitled to any proceeds from the minimum hours guarantee?

A They knew that our arrangement was that we paid for hours flown, which is what we did every month.

Q Before entering into the SportsFlight contract that's in front of you, did you ever tell Mr. Morse or Mr. Gilmour, or anyone else from Assembly Point that they wouldn't be entitled to share in the proceeds of any minimum guarantee?

A I don't recall that that ever came up.

Q What discussions, if any, did you have with Mr. Morse, Mr. Gilmour, or anyone else from Assembly Point before entering into the SportsFlight contract about the division of revenue from SportsFlight?

A I don't know that that came up because we all knew what the arrangement was.

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Q And the arrangement was an 85/15 split?

A For each flight hour. Every time the airplane flew, we reported it at the end of the month, and we paid it at the end of the month.

Q But your view is if the airplane didn't fly and you received money for the airplane being made available to SportsFlight, you did not owe any of that money to Assembly Point?

MR. RYAN: Objection to the form.

A It wasn't something that was thought of.

Q So when you presented the opportunity to Mr. Morse and Mr. Gilmour, was it your view that Richmor was entitled to keep 100 percent of the revenue for hours that were not flown on the aircraft?

A We assumed that the hours would be flown.

Q Okay. And, if the hours weren't flown -- because you understood that SportsFlight was guaranteeing a minimum number of hours whether it was flown or not, correct?

A They were supposed to, yes.

Q All right. Was it your understanding, at the time that you entered into the SportsFlight contract, that Richmor would keep 100 percent of the money for the hours that weren't flown?

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A My thinking and my thought was that we were going to fly the 250 hours, we were going to be paid for it, and we would pay whatever aircraft owner flew those hours.

Q But you were obligated to make Assembly Point's aircraft available for government use 24/7?

A Well, there's a provision to use other airplanes.

Q All right. And where is that?

A I think Number 6 on the contract. We needed to let them know if the airplane wasn't available and we needed to provide a suitable backup aircraft, which we did.

Q And you're referring to paragraph 6?

A Yes.

Q On page?

A Page 3 of 5.

Q It says, "RAI will promptly notify SFA" -- that's Richmor and SportsFlight, correct?

A Yes.

Q -- "of any force majeure condition, which may result in a failure of the aircraft and shall use its best efforts to find suitable backup aircraft."

Is that what you're referring to?

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A Yes.

Q Was there ever any force majeure condition which resulted in a condition of --

A I'm not sure what that means.

Q Let me ask you this: Was there ever a condition which resulted in the failure of this aircraft?

A There were times when the airplane was not available. I don't -- I don't know if that's the same thing.

Q Okay. But this aircraft had never failed?

A Pretty reliable.

Q Okay.

A Well, I'm sure at some point it's failed, but it was still reliable.

Q Let's hope that doesn't happen in flight.

Did you ever provide a copy of this contract to anybody at Assembly Point before it was signed?

MR. RYAN: Are you referring to Number 5?

MR. HENRY: Yes.

A I don't think so.

Q If you look at Section 5, which was on that page 3 of 5 -- Section 5.

A Five we're looking at?

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Q Yes. That section says that "Richmor warrants and represents that it has the right, power, and authority to enter into an agreement and to perform its obligations hereunder."

Do you see that?

A Yes.

Q So was it your view that Richmor had the authority to lease this aircraft to SportsFlight?

A With the consent of Assembly Point.

Q Obviously Assembly Point owned the aircraft?

A Yes.

Q And so in order for you to lease it out, you would need their consent?

A Yes.

Q Did you obtain their consent?

A I think we had their consent in the lease.

Q Did you obtain their oral consent as well?

A We discussed what the activity was going to be.

Q And they consented?

A I don't know if I formally said, do I have your consent to do this. I don't know.

Q All right. You said that you believed you had the authority to do it based on the lease

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agreement with Assembly Point?

A I thought the lease agreement allowed us to do charters on the airplane.

Q On an as needed and as available basis?

A Yes.

Q The lease to SportsFlight though was not an as-needed and as-available basis, correct?

A I guess that's what it was supposed to be.

Q That the aircraft would be available to SportsFlight only when it was not being used by others?

A No.

Q So the lease to SportsFlight was not on an as-available and as-needed basis; is that correct?

A It was -- it was supposed to be -- ask it again, please.

Q All right. SportsFlight was going to have this plane available for its use 24/7, correct?

A That's what the intent was.

Q All right. And they had first priority use of this aircraft, correct?

A They were supposed to.

Q Well, they did have.

A They were supposed to.

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Q All right. Under the contract, they were supposed to have the first priority use, correct?

A Yes.

Q So that is not an as-needed or as-available basis; is that correct?

A If the airplane was supposed to be 24/7, then I say that is not on an as-needed, as-available basis.

Q The hourly rate to SportsFlight was \$4,900 an hour, correct?

A Per -- the rate was \$4,900 per hour.

Q Was that rate authorized under your lease agreement with Assembly Point?

A Under the written lease agreement?

Q Yes.

A No.

Q Was it authorized on some other oral lease agreement?

A The conversation between myself and Assembly, the rate was talked about and agreed to.

Q So there was an oral agreement to allow you to charter it to SportsFlight Air at \$4,900 an hour, correct?

A Yes.

Q When that oral agreement was entered into,

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you had told Assembly Point that there was a minimum number of hours guaranteed under this contract?

MR. RYAN: Objection to the form. You can answer.

Q Had you told Assembly Point that there was going to be a minimum number of hours guaranteed under this contract?

A We probably discussed that Richmor was going -- supposedly was guaranteed -- oh, here it's 250 hours. Richmor was guaranteed by SportsFlight 250 hours.

Q All right. And if Richmor was guaranteed 250 hours, it would receive fifteen percent of that revenue, correct?

A If we flew 250 hours, we received fifteen percent of the flight hours, sure.

Q And Assembly Point would receive 85 percent?

A Whoever -- whatever airplane was flying would receive the other amount, yes.

Q Now as I understand your position, there was never any agreement for Assembly Point to be paid for hours that weren't flown: Is that what you're saying?

A Well, again, there wasn't any thought about that because I had no reason to think that to begin

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with.

Q So you had discussions in which there was an oral agreement to lower the rate to \$4,900 per hour, correct?

A Correct.

Q You had discussions in which you advised Assembly Point that there was a minimum hours guaranteed, correct?

A Discussions that the contract between Richmor and SportsFlight stipulated 250 hours.

Q All right. Your testimony is that there was no discussion of what would happen if that 250 hours wasn't used?

A No.

Q There was no discussion?

A Not that I recall. I don't know why we would have discussed it.

Q Why do you say that?

A I assume if the contract says we're going to fly 250 hours, then we fly 250 hours.

Q Well, the contract also says you're not going to lease it out for less than \$5,100 an hour.

A No, I'm saying this contract.

Q The SportsFlight contract?

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A Yeah.

Q All right.

(Discussion off the record. A brief recess occurred.)

BY MR. HENRY:

Q If I can have you look at Exhibit 5, which is the SportsFlight contract. If you look at paragraph 1, that required Richmor to name Meta Bittenheim Air Marketing Services, SportsFlight, and DynCorp as additional insureds on the Richmor policy for this aircraft. Do you see that?

A I see that.

Q And was Air Marketing Services, was that Meta Bittenheim's company or entity?

A Yes.

Q She was a broker, as you testified to earlier, correct?

A Yes.

Q Did you have an agreement with her to pay her a commission on this transaction?

A Yes.

Q Was there a written agreement to that effect?

A I don't know.

Q What were the terms of your agreement with

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her?

A My recollection was that it was a five percent standard broker commission.

Q Did you pay her that commission?

A Yes.

Q Did you pay her the commission on the funds that you received from the SportsFlight settlement?

A No.

Q Has she ever demanded payment for the funds on the SportsFlight settlement?

A No.

Q Did you ever inform her of the SportsFlight settlement?

A I did not personally.

Q Do you know if she's aware of the SportsFlight settlement?

MR. RYAN: Objection to the form. You can answer.

A I think so.

Q And what makes you say that?

A She's friends with the dispatchers. They go out to eat and socialize, and she still does business with them.

Q Has she demanded money from you for

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commission on the SportsFlight settlement?

A No.

Q If you look at paragraph 1 of the SportsFlight contract, it requires Richmor to maintain a \$200 million insurance policy. Do you see that?

A Yes.

Q And that's 100 million more or double what was required under the Assembly Point agreement, correct?

A Yes.

Q Did Richmor increase the coverage on this aircraft to \$200 million?

A Yes.

Q And who paid for that additional coverage?

A I believe SportsFlight.

Q SportsFlight paid Richmor for the extra \$100 million of coverage?

A I believe so.

Q That wasn't charged back to Assembly Point?

A I don't think so.

Q All right. Do you have any records that would reflect that?

A I think there are records. We'd have to look.

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Q Okay. I'm going to again make that request of you to look for those records after your deposition. I'll put that request in writing to your attorneys as well.

A Okay.

Q The SportsFlight contract required Richmor to maintain the aircraft and to pay the pilot and flight crew salaries, correct?

A Say that again for me?

Q Your contract with SportsFlight required you to pay the flight crew salaries and all maintenance expenses for the aircraft; is that correct?

A No, I don't think so. Maybe I'm not understanding the question.

Q Well, was SportsFlight responsible for paying maintenance expenses for the aircraft?

A No.

Q Who was responsible for paying maintenance expenses for the aircraft?

A Assembly Point.

Q If you look at paragraph 2, third sentence, it says that, "RAI, as operator of the aircraft during the term of this agreement shall be responsible for, at its expense, the maintenance, repair, and periodic

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inspection of the aircraft, inclusive of the engines, instruments, airframe, and each of its other components and subsystems." Do you see that?

A Yes.

Q So was Richmor responsible, at least under this SportsFlight contract, for maintenance of the aircraft?

A Yes, I mean, that's no different than any other charter.

Q All right. But, in this instance, Richmor didn't pay those expenses, Assembly Point did?

A Yes -- well, Richmor paid all the bills --

Q Which were then reimbursed.

A -- at the end of the month submitted to Assembly Point, yes.

Q Richmor didn't bear the expenses ultimately?

A Only for a little while.

Q All right. Who flew the aircraft on the SportsFlight flights?

A Oh, gosh.

Q Was it Richmor pilots?

A Rich -- it would have been a combination of Richmor pilots and on occasion where we just ran out of people, we would rent a pilot. During the term of

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our activity with SportsFlight, we used nineteen different pilots.

Q So in terms of the actual flights to Pakistan, or wherever this pilot was going, that was a Richmor pilot in charge of the aircraft?

A Yes.

Q Just curious more than anything.

In other words, it wasn't an instance in which SportsFlight or the government supplied its own pilots for these trips?

A No.

Q Again, those crew salaries were paid by Assembly Point, correct?

A Yes -- that's not -- that's not 100 percent correct.

Q All right. In those instances where you had to rent a pilot or something like that, who would pay for that pilot?

A If we had to rent a pilot for a SportsFlight flight, we would, I believe, pass the cost of the rental pilot on to SportsFlight. If -- if it were -- if they were Richmor pilots, they may have been paid by Assembly Point. They may have been paid by Richmor.

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Q But were there pilots assigned to this particular aircraft?

A There were pilots that were primarily assigned to the aircraft.

Q And those pilots were paid by Assembly Point?

A Those particular pilots would have been paid by Assembly Point.

Q All right.

A But there were other pilots that flew the missions in addition to the three Assembly Point pilots.

Q Who flew the majority of the missions, Assembly Point pilots or other pilots?

A I would think Assembly Point pilots. I'd have to look.

Q For those instances in which a pilot other than an Assembly Point pilot flew the aircraft, did Richmor ultimately bear the expense of that pilot or was that passed on to SportsFlight?

A It would have been a Richmor pilot and if there weren't more than three pilots on the mission, then SportsFlight would not be billed. They would be billed if we had to rent -- some of the missions required four pilots.

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Q Okay. That's due to the length of the flights?

A Yeah.

Q But, in any event, if that happened, that cost was passed on to SportsFlight?

A If it were an extra pilot, yes.

Q If you look at the last page of the SportsFlight contract, it calls for a deposit of \$147,000 on guaranteed hours. Do you see that?

MR. RYAN: Page 5 of 5.

A Okay.

Q That's a ten percent deposit, correct?

A Yes.

Q So, by my rough math, it's expected that the guaranteed hours would, at that point, be 1.47 million?

A Yeah, I guess ten percent, ninety percent of it, yeah.

Q And did Richmor receive that deposit?

A I don't think so.

Q Do you know one way or the other whether you actually received that deposit?

A I don't think so. I'd have to check the records, but they were not good payers.

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Q So was SportsFlight supposed to pay the ten percent basically on execution of the contract?

A Yes.

Q And your testimony is that you don't think they did that?

A I don't think so, no.

Q Why did you go forward with the contract if they didn't pay the deposit?

A Because I trust people.

Q So, if you don't think that you received the deposit, would it be fair to say that you don't think that you paid any portion of the deposit over to Assembly Point?

A No, no, no. Why would we do that?

Q Do you know one way or the other whether you paid any portion of the deposit over to Assembly Point?

A We would have only paid on hours flown, so if you're saying that that's ten percent of the contract and we flew those hours, then we would have paid a portion, but it wasn't necessarily a portion of the deposit, because I don't think we ever received the deposit. It took two to three months to get paid on whatever we did.

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Q Turn back to Exhibit 4, which is the Department of State letters. I may have asked you this before, and your counsel will object on the grounds that it's been asked and answered, but there's a first flight that's referenced in Exhibit 4 as a flight or a mission from January 9 through January 31, 2002. Do you recall any discussions that you had with anybody at Assembly Point about this first flight with its aircraft?

A I don't recall.

Q Do you have any notes or other documents that would refresh your recollection as to whether you had those conversations?

A No.

Q The flights operated by SportsFlight, were they in accordance with FAR Part 135?

A No -- oh, no.

Q Why was that?

A Because it was not a 135 flight.

Q If you look at the sixth page of the Department of State letters, which are Exhibit Number 4 --

A Is it 4/23?

Q Yes. All right. In the last sentence it

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says, "All operations will be accomplished in accordance with FAR 119.57 and will not be considered a FAR Part 135 flight."

Can you explain to me what that means?

A I'm not familiar with 119.57, but it says it would not be considered a 135 flight, so I guess it means that it is not a 135 flight.

Q Do you know if the flights that are reflected in Exhibit 4, the Department of State letters, are those all of the flights that were flown on the G-IV that's owned by Assembly Point under the SportsFlight arrangement?

A I don't know.

Q I'm going to show you a document that's been marked for your deposition as Exhibit Number 1 this morning.

(The document was handed to the witness, and the witness examined the document.)

Q Can you tell me what that document is, sir?

A It says that it's a single entity aircraft charter agreement. It looks like it's between Capital Aviation and DynCorp.

Q Who or what is Capital Aviation?

A I think they're a broker in Washington.

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Q Did you have any dealings with Capital Aviation relating to the aircraft owned by Assembly Point?

A Well, I wasn't aware of any, no. Our dealings were between SportsFlight and Richmor.

Q All right. How about DynCorp, did you have any dealings with DynCorp about the SportsFlight contract?

A Yes.

Q And what dealings did you have?

A It seemed as though one of the main people that was coordinating the activity by the name of Steve Lee did a lot of coordinating of the flights and I think he worked for DynCorp at some point here.

Q Before entering into the SportsFlight contract, did you have any discussions with Mr. Lee or anybody else from DynCorp about the terms of the SportsFlight contract?

A I believe we did.

Q What were those discussions?

A I think it was primarily about what we were going to do, what the flights were.

Q What did he tell you about what the flights were?

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A He -- he said that they would be government-related flights. We'd be flying government people. They wouldn't ask us to -- they wouldn't ask us to do anything dangerous or illegal.

Q Did you have any discussions about what the aircraft needs were, what type of aircraft and how often it would be needed?

A Well, the conversations most generally were around Gulfstream airplanes, and we would need to be on call all the time.

Q And the aircraft would need to be on call all the time?

A There would have to be an aircraft on call all the time, yeah.

(Plaintiff's Deposition Exhibits Numbers 6, 7, 8, and 9 were marked for identification, this date.)

BY MR. HENRY:

Q Sir, if you can take a look at Exhibit Number 6. Can you tell me what that document is, sir?

(The document was handed to the witness, and the witness examined the document.)

A It's a letter to Don Moss at SportsFlight Air.

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Q There's some accompanying invoices from Richmor?

A There's an invoice it looks like.

Q And that's the revised invoice dated 10/19/06 that's the last page of the exhibit that's in front of you?

A I'm looking for the date. Yeah, 10/19/06, yeah.

Q Okay. And was this a bill for the unused hours on Assembly Point's plane?

A Yes.

Q At this point, the tail number registration number of the aircraft had been changed; is that correct?

A Yes.

Q Why was the tail number changed?

A For security purposes.

Q What do you mean by that?

A Well, during this time, there were people that didn't agree with what the government was doing, and they had the ability to track airplanes, and they were tracking the airplanes that we were using.

Q Were there any other aircraft that Richmor used for any of the SportsFlight or government flights

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for which the tail number had to be changed?

A No.

Q Was it fair to say that this plane became somewhat notorious for being associated with the rendition flights?

MR. RYAN: I'll object to the use of some of the language in that question, but you can go ahead and answer it.

A It was one of the airplanes that people were looking at.

Q It had become the target of negative publicity and hate mail?

A Yes.

Q It would always be linked to renditions; is that correct?

A Probably would. I don't know. Always is a long, long time.

Q Well, I'm actually using your words, which are in the first page of the exhibit that's in front of you in which you said that, "G-IV N227SV will always be linked to renditions. No tail number change will ever erase that and our requests for government assistance in this matter have been ignored." Is that correct?

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A Yes.

Q In the next sentence you indicated that the owners of N227SV are afraid to fly in their own aircraft. Is that true?

A There was a comment made to us that Mrs. Morse was hesitant to fly in the airplane.

Q You also indicated that we are losing a management customer due to this association. Can you explain for me what you meant by that?

A There was a customer that we had that indicated that they weren't comfortable having their airplane managed by a company that was doing this type of thing.

Q Who was that?

A I don't know that I -- I prefer not to -- it's another company.

Q Fair enough. It wasn't a reference to anybody associated with Assembly Point; is that --

A No.

Q So another private aircraft owner?

A Yes.

Q Okay. Who handled the change of the tail number?

A That would have been my maintenance and

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inspection department.

Q You had to repaint the plane as well?

A The tail number, just the number.

Q Was that charged back to Assembly Point?

A I don't know.

Q It would have been in the normal course, no?

MR. RYAN: Objection to the form.

A It would have been under normal circumstances.

Q If you look at the second page through the fifth page, there are some charts that say date of flight, hours, and flight for the next three pages or so. Can you explain for me what this chart is?

MR. RYAN: They start on 321 and go to 324, so why don't you -- I don't want to ask the question for you --

MR. HENRY: No, that's fine.

MR. RYAN: -- why don't you tell him the columns, what they mean, the hours and the flight.

A Okay. The first column is the date of the flight, the second is the flight hours, and the third would be -- well, on 321 would be one of the places that the airplane would have gone.

Q What's the code MUGM?

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A Guantanamo.

Q And LTAG, do you know?

A I don't know.

Q And OAKB?

A Don't know.

Q Were these flights -- what flights were supposed to be on this sheet?

A The flights that we flew on this particular airplane, I believe.

Q Were these hours that were actually used on Assembly Point's airplane?

A I believe so.

Q And all of the hours that were actually used on Assembly Point's airplane, were they all paid for by SportsFlight before the lawsuit?

A All of --

Q I mean before the State Court lawsuit?

A They paid for all of the flying that we did. SportsFlight paid for all of the flying that we did for SportsFlight that we billed them for. So we would have billed them for the flights that we did, and they would have paid for them.

Q So all the flights that were flown on Assembly Point's aircraft were actually paid for by

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SportsFlight, correct?

A All of SportsFlight's flights were paid by SportsFlight.

Q Correct. And how about any of the other aircraft, if SportsFlight flew on another -- used another aircraft, actually used another aircraft, were those bills also paid?

A Yes.

Q All right. And for the hours that were flown on Assembly Point's aircraft and paid for by SportsFlight, did Richmor remit the 85 percent to Assembly Point for those flights?

A At least 85 percent.

Q What do you mean when you say "at least 85 percent"?

A When we went into this, I was concerned that there might be occasions where the direct operating cost of the airplane might be more than normal, maybe we went to East Timbuktu and it was \$10 a gallon instead of \$2 a gallon. I would look at the flights and make sure that he was getting the appropriate similar revenue. If there was a time where the direct operating costs exceeded what I thought it should be, then I would give up some or all of my commission.

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Q Okay. So there were instances in which you paid more than 85 percent to Assembly Point, for the hours that were actually flown, in order to make sure that it wasn't unfair to Assembly Point that they were covering excess costs: I think that's what I understand you to be saying.

A I think so.

Q All right. So the invoice that's the last page of Exhibit 6 -- at this point in 2006 the only -- was the only thing that SportsFlight owed Richmor the money for the unused hours on Assembly Point's plane?

A No, no. These are unused hours of their guarantee to us, Richmor.

Q And their guarantee to Richmor was to use Assembly Point's plane for at least fifty hours per month, correct?

A Not correct.

Q All right. What was their guarantee to Richmor?

A That they would -- that we would have fifty hours of revenue per month.

Q Is that reflected in the contract between Richmor and SportsFlight?

A Yes.

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Q It is?

A Well, in the initial contract, it calls out 250 hours for, I believe, a five-month period of time.

Q Fifty hours per month on Assembly Point's aircraft?

A On whatever airplane we used.

Q All right. Where does it say whatever airplane you used?

A I guess I would refer back to Number 6 where it says, "We'd use our best efforts to find a suitable backup aircraft whenever the named airplane wasn't available."

Q And I believe you testified that if you used a suitable backup aircraft, SportsFlight paid you for those hours?

A Yes.

Q And they paid you for those hours before you filed suit against SportsFlight?

A Yes.

Q The invoice that is the last page of Exhibit Number 6, is this the invoice that Richmor ultimately sued SportsFlight on?

A I think so.

Q Do you have a copy of the State Court

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complaint in front of you?

I'm showing you a document that's been marked for your deposition as Exhibit Number 8.

(The document was handed to the witness, and the witness examined the document.)

Q Is it fair to say that that's a copy of the complaint that was filed by Richmor against SportsFlight Air in New York State Court?

A That's what it says.

Q If you look at the third to last page of that exhibit, is that your signature, sir?

A Yes.

Q Did you understand when you were signing the complaint that you were attesting to the truth of the matters set forth in the complaint?

A Yes.

Q Is there anything in the complaint that you believe is not true?

MR. RYAN: Why don't you read it.

(The witness examined the document.)

A Okay. It looks like it's okay.

Q Well, if you look at the verification page, which is the next page up, you attested that you were -- that the contents of the complaint were true

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to your own knowledge, correct?

A Yes.

Q And if you look at the very last page of the complaint, it has the revised invoice dated October 19th, 2006.

A The last page, 192?

Q That's correct. And that was the invoice that Richmor was suing SportsFlight on, correct?

A Correct.

Q Did you share the complaint with anybody from Assembly Point before it was filed?

A Did I share this complaint?

Q Yes.

A I don't think so.

Q All right. Did you tell them before Richmor sued that you were suing SportsFlight?

A It was my concern that because of the negative publicity that was happening while we were doing it that, if it went to court, there might be more negative publicity, and I wanted to check with them and see what their feelings were about my suing SportsFlight, just in case it was -- all came out in the news again.

Q So you did speak with somebody at Assembly

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Point to let them know that you were filing suit?

A I believe I talked to Dave Gilmour.

Q What did you tell him and what did he tell you, as best you can recall?

A From what I recall, I think I told him we were thinking of suing for money and would they have any problem with that.

Q Did you have any discussion with Mr. Gilmour or anybody else at Assembly Point about how any proceeds of the lawsuit would be divided?

A No.

Q Did you have any discussions about how any expenses of the lawsuit would be borne?

A No.

Q Do you recall that for a fact or are you saying you don't recall whether you had conversations one way or the other?

A I would have no reason to, so I would say no.

Q Do you remember that specifically that you did not have any discussions about either of those two issues?

A Pretty much. It was our lawsuit and our expense.

Q When did you have this conversation or

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conversations with Mr. Gilmour?

A It would have been before we proceeded with the lawsuit. I don't know -- oh, is this '06, maybe?

Q Well, the complaint is dated April 10, 2007, do you see that, page 14?

A So it would have been prior to April 10th.

Q Was this conversation in person?

A No.

Q It was on the phone?

A Yes.

Q And what month was it?

A I don't recall.

Q Did you take any notes of your conversation?

A No.

Q Did you send any follow-up correspondence to Mr. Gilmour or anybody else from Assembly Point about that conversation?

A No.

Q You testified at the trial of the case. Do you know if you were also deposed in the lawyer's office like you are being today?

A I don't remember. I don't remember being -- I don't remember. I'm sorry.

Q Was Mr. Moss deposed?

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A Yes.

Q Did you attend his deposition?

A Yes.

Q Is there any document in Richmor's filings with the State Court or its pleadings or any document that it served that you believe was not truthful?

A Oh gosh, I don't -- I don't know what was filed.

Q Would it be fair to say that whatever was filed with the court by Richmor, was truthful, to your knowledge?

A To my knowledge?

Q Yes.

A And the question was, was it true or false?

Q Yes.

A I -- I can only assume that it would be true.

Q All right. And was there anything in your testimony at trial that you believe was not true? You were obligated to tell the truth at trial in the case, correct?

A Yes.

MR. RYAN: Objection.

Q So do you believe that anything in your testimony was untruthful?

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MR. RYAN: Objection. Are you referring to any particular fact that we can hone in on, because it's an improper question for impeachment if that's the approach?

Q Okay. You can answer if you know what I'm asking. Did you testify truthfully in the State Court case?

A Yes.

Q Okay. I'm going to show you a document that's been marked as Exhibit Number 9 for your deposition today, which appears to be a copy of Richmor's interrogatory responses in connection with the State Court case. Do you see that?

(The document was handed to the witness, and the witness examined the document.)

A Yes.

Q If you look at the last page of that exhibit, did you also sign those interrogatories under oath, sir?

A Yes.

Q If you look at your response to interrogatory number 3(a), which is on the bottom of the second page in particular --

MR. RYAN: Read the question first.

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Q -- in particular -- I'll read the question. There was a preceding question, Interrogatory Number 3, which was asking to identify the negotiations leading up to the June 18, 2002, SportsFlight contract.

A Okay.

Q And then there's a follow-up question which asked to identify the specifics of those negotiations. At the bottom of the page you indicate that there were discussions in person at Hudson, New York; Huntington, New York, and Washington D.C. Do you see that, sir?

A Yes.

Q Did you relay any of those discussions to Mr. Morse or Mr. Gilmour or anybody at Assembly Point, other than what you testified to before, that you had been presented with this opportunity?

A Yes, yes. Other than that, I don't recall any other discussions.

Q Did Mr. Gilmour or Mr. Morse attend any of those meetings that you had with SportsFlight?

A No.

Q If you look at the next page, there's some people identified. Donald Moss, he was the principal of SportsFlight, correct?

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A Yes.

Q Who is Frederick Credno?

A I think he's associated with that other one you showed me, Capital --

Q Capital Aviation?

A I think so.

Q And Steven Lee I think you've already identified, and who is Marisa Perez Eickenhorst?

A Don't know.

Q If you look at Interrogatory Number 5, which is on the bottom of page 4 -- do you see that?

A Yes.

Q -- that asked you to "Set forth in detail every legal and factual basis known to you upon which you base your contention that Plaintiff performed all conditions and obligations pursuant to the terms of the contract." And then the response is that, "Plaintiff performed all the conditions and obligations pursuant to the terms of the contract by having the Gulfstream IV aircraft available at all times for the benefit of the defendant." Do you see that?

A Okay.

Q The Gulfstream IV aircraft that's referenced

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in that response is Assembly Point's aircraft; is that correct?

A That's not correct.

Q That's not correct? It refers to another Gulfstream IV aircraft?

A Well, it's saying that the aircraft is available at all times. That part is not correct.

Q So when you signed these interrogatories under oath, that statement was not correct?

A That aircraft was not available all the time.

Q And what do you mean by that?

A It wasn't available all the time.

Q Well, as I believe your earlier testimony, that aircraft had to be available 24/7 for SportsFlight's use, correct?

A An aircraft, yes.

Q Does it say an aircraft --

A It says --

Q -- in the SportsFlight contract?

A Oh, in the SportsFlight contract does it say an aircraft?

Q Yes.

A It kind of indicates that there needs to be an airplane available, yes.

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Q It kind of indicates that?

A It -- it indicates that there should be an airplane available.

Q It kind of indicates that by the tail number on the plane?

A Well, the tail number that we put on the contract was -- it was a tail number.

Q Okay.

A But we agreed to be available --

Q All right.

A -- 24/7.

Q Your response to Interrogatory Number 5 doesn't say an aircraft. It says the Gulfstream IV aircraft; is that correct?

A That's correct.

Q And you swore to that response under oath, correct?

A That's correct.

Q In Interrogatory Number 9, you were asked to specify Richmor's claim that it had been damaged in the sum of \$2,579,900.67. Do you see that?

A Yes.

Q Was that the amount of Richmor's claim against SportsFlight in the State Court action?

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A I'd have to check and see if that's the amount. I think it's \$2,468...

Q On the invoice?

A Yeah.

Q All right. How about in the complaint, which in particular, the last page -- I'm sorry, page 14 of the complaint.

A Is this what you're referring to (indicating)?

Q Yes, sir.

A Page 14?

Q I'm referring to the 14 at the top there.

A Oh, okay.

MR. RYAN: What's the question there, John?

Q What was the amount claimed in the complaint?

A All right. So it says not less than two million five seventy-nine and that's the same figure here.

Q Was it your belief that SportsFlight Air owed you that amount of money as of the date the complaint was filed on April 10th, 2007?

A Yes.

Q And you didn't actually collect that amount

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of money from SportsFlight Air, correct?

A Correct.

Q You collected \$775,000 from SportsFlight Air correct?

MR. RYAN: Ultimately?

Q Ultimately the settlement with SportsFlight Air was for \$775,000?

A The settlement was for \$775, yes.

Q Thousand?

MR. RYAN: Thousand.

A Thousand. Okay.

Q If you look at Interrogatory Number 10, which is on the next page, that asks you to "State whether or not Plaintiff and Defendant entered into any Agreements, other than those alleged in the complaint, for Plaintiff's provision of charter flight services for Defendant from the year 2000 through the present," and you responded there were no other agreements.

A Yes.

Q Is that correct?

A I think so, yes. Well, I -- I think I have to take that back.

Q Okay.

A May I take it back?

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Q You can try. Did you want to clarify that?

A I'd like to clarify it. There was a point after the first five months, six months, whatever you want to call it, that they told us that trying to use one airplane wasn't working. It was inconvenient to SportsFlight. It was inconvenient to, I believe, DynCorp and the government, and we needed to make other airplanes more available to them.

Q Okay. When you made those other aircraft available to them and they were flown, SportsFlight paid Richmor for those hours?

A They did.

Q And they did that before you had sued?

A Say it again?

Q They did that before you sued them?

A Yes.

Q So the lawsuit was only for the unflown hours; is that correct?

A It was for the unflown hours as it relates to the -- well, at that time, the fifty hours a month. All the airplanes that we flew would be part of that fifty hours.

Q What do you base that on?

A What do I base that on?

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Q Yes.

A How I interpret what we were supposed to be doing for them. We were supposed to be providing them fifty hours per month.

Q So didn't you sue SportsFlight to recover the unflown hours on Assembly Point's airplane?

A No.

Q You didn't?

A Did not.

Q Okay.

(Plaintiff's Deposition Exhibit Number 10 was marked for identification, this date.)

(The document was handed to the witness, and the witness examined the document.)

BY MR. HENRY:

Q Let me ask you, sir: Was there a specific contract associated -- I'm sorry. Strike that.

Was there a specific aircraft associated with the SportsFlight contract?

A The initial contract we signed, the assumption was that, during that period of time, the primary aircraft that was going to be used was 85 Victor Mike. That would be the primary aircraft.

Q You had one contract with SportsFlight Air,

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correct?

A Yes.

Q And that contract was orally extended, correct?

A Orally extended, yes.

Q So is it your testimony that there was not a specific aircraft associated with the SportsFlight contract as orally extended?

A That's correct.

Q There was not?

A There was not. It was stipulated in the extension to the contract that there needed to be other aircraft that we would make available, and I think in the -- there was some paperwork where they listed some of the airplanes, but I don't think it was -- it wasn't formal.

Q There was some paperwork in which --

A There was a contract that we started to generate following the initial five months that listed other airplanes in our fleet.

Q Let's talk about the 250 hours under the initial contract. Part of the lawsuit against SportsFlight was to recover any of those hours, correct?

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MR. RYAN: Can you repeat that question?

Q Part of the lawsuit against SportsFlight was to recover a portion of the unflown hours under the original written contract?

A Oh, gosh, I don't know. It was my recollection that they certainly flew more than 250 hours. I think they flew well more than 250 hours.

Q So it's your testimony that there was not a specific aircraft associated with the SportsFlight contract?

A Yes.

Q Were you asked the following question and did you give the following answer at trial -- and I'm referring to Defendant's 227 of your trial testimony --

MR. RYAN: What page, 227?

MR. HENRY: Yes, it's actually on the bottom. I don't know which number to use.

Q "Was there a specific aircraft associated with this contract?"

Answer: "Yes, it was a Gulfstream IV, November 85 Victor Mike was the registration."

Question: "N85VM?"

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Answer: "Yes."

Was that testimony truthful?

A That was -- that aircraft was associated with this contract; that is correct.

Q Was SportsFlight short any hours on the 250 guarantee in the initial six-month period? Were they short by 81 hours?

A I -- I think that that's probably correct. When I -- when I looked at it, I was looking at a month and I guess I should have been looking at a specific date. I guess it was -- was it May 6th to November 6th?

MR. RYAN: We have the contract right here.

(The document was handed to the witness, and the witness examined the document.)

A Yeah, May 6th to November 6th.

Q Yes. Was SportsFlight short by 81 hours on the initial 250, if you know?

A At November 6th, I believe they were short by 81 hours.

Q And you were suing them for that shortage?

A No.

Q No?

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A No. My conversation with Don Moss, at that time, was that we completed the five months; we were short some hours. His comment back to us was that we want to continue to do the flying. We're going to get busier, and we'll make up those hours. And I said, okay. And sure enough, by the end of November of that year, he had made up the hours.

So, in my mind, no, we were not suing for those 81 hours because they had already been flown and paid for.

Q Did you ever testify to the State Court that part of what you were seeking to recover were unflown hours on other aircraft?

A They were unflown hours on any aircraft, I mean, it was a fifty-hour thing and we used many different airplanes, so they were just unflown hours.

Q But you used many different airplanes but you were paid for each of the hours that were flown on those other airplanes, correct?

A We were paid for all the hours that we flew, whatever airplane.

Q If any of the other aircraft owners wanted to use their aircraft, were they required to obtain the government's permission before doing so?

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A I would say no.

Q So for the entire period of time that the SportsFlight contract was in effect, all the way through 2005, was the Assembly Point plane supposed to be reserved for the government's use under the contract with SportsFlight?

A No.

Q Okay. Were you asked the following question and did you give the following answer during your trial --

MR. RYAN: What page?

MR. HENRY: Defendant 273.

Q -- during your trial testimony --

MR. RYAN: Wait until I get there.

Q "Was the 85 Victor Michael plane supposed to be reserved during this period for the government use pursuant to this contract?"

Answer: "Yes."

The Court: "Exclusively?"

Question: "Exclusively?"

Answer: "Yes."

Is that correct?

A No. You want to go on with your reading?

Q Well, let me ask you this: Was that

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testimony correct? Was the 85 Victor Michael plane supposed to be reserved during this period for the government use pursuant to this contract?

A I think that was the intention originally, yes, although -- during the initial time it was supposed to be.

Q Well, what did you mean when you said pursuant to this contract?

MR. RYAN: Objection.

Q I'm just stating your --

A Well, the contract -- the contract was for a six-month, five-month period of time.

Q And so you only recovered against SportsFlight on a six-month contract?

A No, no.

Q You recovered against SportsFlight on a contract for several years, correct?

A That's correct.

Q Because it was orally extended, correct?

A Month-to-month.

Q And the written contract was extended on a month-to-month basis, right?

A Yes.

Q And the written contract required Assembly

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Point's aircraft to be reserved exclusively for the government's use during that period, correct? That's your testimony during the trial, correct?

A That's the testimony there. I guess as I think about it, there were other airplanes that they stipulated.

Q Where? Where were those other airplanes stipulated to?

A In an agreement that we started to do and then we just decided to just do it verbally.

Q And SportsFlight attempted to introduce that agreement into evidence in the State Court action and was denied, correct?

MR. RYAN: Objection. Don't answer the question. He doesn't remember.

MR. HENRY: That's fine.

MR. RYAN: It was five years ago.

Q You didn't recover against SportsFlight on the basis of that contract that was never signed, correct?

MR. RYAN: Objection.

A I believe we recovered on the basis that there was an agreement that we were going to fly for so many hours for so many months and we didn't.

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Q When SportsFlight used other planes for flights, did you credit those other hours towards the monthly minimum?

A Yes.

Q Did you have any conversations with anybody at Assembly Point in which -- strike that.

You testified earlier that before you filed the complaint against SportsFlight, you had a conversation with Mr. Gilmour telling them that you were about to do this and you were concerned about potential publicity, correct?

A Yes.

Q How about after the lawsuit was filed, what communications did you have with Assembly Point about the progress in the litigation?

A Very, very little.

Q Do you remember any specific communications about the progress of the lawsuit?

A I remember -- I think I remember telling Dave Gilmour, after we got the judgment, that we had got the judgment. I don't remember much prior to that.

Q Do you remember meeting with Ms. Suprenant at Richmor's offices in Schenectady in January 2009 at which point the litigation was discussed?

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MR. RYAN: Ms. Who?

MR. HENRY: Suprenant.

MR. RYAN: Hi.

MS. SUPRENANT: Hi.

A I remember a meeting in Schenectady that the purpose of the meeting was to discuss how we could reduce the expenses on the operation of Mr. Morse's airplane, because it wasn't being utilized as much as he wanted to and were there things that we could do to help that.

Q What discussions do you recall about the lawsuit?

A I don't.

Q Do you know of anything that would help you recall, any documents or records that would help you recall?

A No.

Q Did you take any notes?

A I may have taken some notes as it related to the -- how we could reduce the expenses of the operation of the aircraft.

Q Do you recall specifically whether you did or didn't take notes?

A I think I did.

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Q All right. Have you looked for any of those notes in response to our discovery demands in this litigation?

A Yes, I've looked through my paperwork.

Q And were you able to find any notes?

A No.

Q Now, the trial was in July of 2009, correct, that's the date on the transcript?

A Okay. Yes.

Q Do you recall having any discussions with anybody from Assembly Point after the trial about the results of the case?

A After the trial?

Q Yes.

A As I stated, I believe I called Dave Gilmour and told him that we had been successful, and I may have -- I'm sure at some point I mentioned it to Cynthia, but I don't know when.

Q Do you recall meeting with Cynthia in 2009, at which point the lawsuit was discussed at all?

A In 2009?

Q Yeah, we talked about one meeting in January of 2009 --

A At Schenectady.

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Q -- at Schenectady. Do you recall any other meetings with Cynthia in 2009 after the trial at which the litigation was discussed at all?

A When did we meet in Schenectady?

Q January.

A January of 2009?

Q Yes. Before the trial in July 2009.

A This was the trial to?

Q Against SportsFlight Air.

A Against SportsFlight. Okay. Prior to the judgment, was that?

Q It would have been after trial at least.

MR. RYAN: After July of 2009, did you have any discussions with Cynthia about the trial?

Q Or about the litigation at all.

A I'm confused about the trial to -- or the trial to get the money.

Q Right.

A There's two different things, I think.

Q Oh, okay. So are you talking about the proceedings to enforce the judgment?

A That's what I'm wondering: Which?

Q All right. I'm only talking now about the actual trial, when it was hot out in July of 2009 and

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you went and testified in front of the judge.

A Judge.

Q Okay. After that, do you recall any discussions with anybody from Assembly Point about the trial or the litigation?

A Again, after the judgment, after the judge decided that we were right, I would have mentioned it to Dave Gilmour over the phone, and I may have mentioned it to Cynthia.

Q How about before the judgment was actually entered, while there were some proceedings to determine the amount of the judgment, does that refresh your recollection at all?

A Proceedings to determine the amount of the judgment?

Q Right.

A No, I recall -- I recall a discussion with Cynthia, but I think it was after the judgment, and it was about, you know, we would have conversations about things, and during the conversation, this might come up because it might have been about the settlement.

Q Let me ask you this: Do you recall any discussions with anybody from Assembly Point about how the proceeds of the lawsuit would be distributed?

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A I would have had a discussion that I wanted to give Mr. Morse some of the money.

Q And that would have been in 2013 after the plane had been removed from Richmor's control; is that correct?

A No.

Q All right. So let me ask you this: What conversations do you recall about giving Mr. Morse a sum of money?

A I certainly don't recall dates or places or phone calls. I just know that I had discussed it.

Q All right.

A I can't give you any specific times.

Q Was it before or after Richmor received the settlement funds?

A I would think it would have been both.

Q Why were you offering to make a gift to Mr. Morse?

A Mr. Morse has been a very good customer. I guess, after the fact, I wish we'd never done this because he got bad publicity. We got extremely bad publicity, and I just felt that I should pay him something.

Q Fair to say that Mr. Morse is a relatively

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wealthy gentleman?

A I believe he is.

Q Is it your habit or Richmor's business to make gifts to wealthy gentlemen?

A I don't -- doesn't make any difference to me whether somebody's rich or poor if I want to do something for them. It certainly wasn't the amount of money. It was just a gesture.

Q Did you have any discussions about settling the SportsFlight case with APA, with Assembly Point? In other words, did you talk to them about the status of any settlement discussions that you may have been having with SportsFlight Air?

A Now, this is after the fact when we're trying to collect the money; is that correct?

Q Yes.

A There were some discussions that I would have had with Cynthia. You know, I remember one time where we were talking and we were at a point where they were offering 50,000 a month or something, and I kind of asked her for her opinion.

Q Why did you ask her for her opinion?

A Well, I asked her for her opinion and I asked her for some ideas because I knew at one time she told

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me that she was a lawyer, and we were kind of looking for -- we were having a lot of trouble in getting any money, and it seemed to be the thought from most everybody that we weren't going to get any money, including the folks at Assembly Point and including my employees and, it seems, anybody I talked to.

So I was asking anybody and everybody what their experience and thoughts were on: We spent \$100,000. We've got nothing to show for it. Everybody tells us that they've had enough time to hide the money and do whatever, whose got an idea.

Q Did you ever seek approval from Assembly Point to settle the case with SportsFlight?

A No.

(Discussion off the record. A brief recess occurred.)

(Plaintiff's Deposition Exhibits Numbers 11 through 16 were marked for identification, this date.)

BY MR. HENRY:

Q Mr. Richards, I'm going to hand you a series of documents marked as Exhibit 11 for your deposition today, and these appear to be the stipulation of settlement, a letter to your counsel dated August 1,

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2012, and a copy of a check. I'll ask you to take a look at these.

(The document was handed to the witness, and the witness examined the document.)

Q Do those documents reflect the settlement that was entered into being Richmor and SportsFlight Air?

A Yes.

Q And so the case against SportsFlight Air was ultimately settled in July of 2012 for \$775,000; is that correct?

A Yes.

Q The settlement check was sent to your counsel on or about August 1st, 2012, correct?

A Yes.

Q Did you tell anybody from Assembly Point that you had received the money from SportsFlight Air?

A No -- well, at what point in time?

Q Well, when you received the funds?

A No.

Q Why not?

A I don't know. I guess I was trying to figure out what my intentions were as far as sharing something with Mr. Morse.

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MR. RYAN: Just so the record is clear, and I don't mean to be interrupting here, the remitter on the check is Classic Air Charter, not SportsFlight.

MR. HENRY: Okay.

Q Is it fair to say that the settlement check that was received was in resolution of the litigation against SportsFlight?

A Yes.

Q When did you first tell anybody from Assembly Point that you had received the settlement funds?

A I believe it was December of '13 or January of '14.

Q Okay. Would that have been December of '12 -- 2012 -- or January 2013, being a year ago?

A Oh, okay. All right. You're right.

Q Who did you tell?

A Cynthia Morris.

Q Did there come a point in time when Assembly Point had decided to move the aircraft from Richmor management to another company?

A Yes.

Q When were you first made aware of that decision?

A Officially, I think it was December, again,

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the same thing December '12, January '13. Rumors prior to that.

Q Rumors from the pilots or from somebody at Assembly Point?

A Yeah, we had a pilot sitting in the lobby and somebody came up to him and said, by the way, we're taking your airplane. The pilot -- at that point, the pilot called and mentioned that to me and asked me if I knew anything about it, and I said, hadn't heard a word.

Q Do you know if you told Assembly Point that you had received the settlement funds before you were aware that they were moving the plane to another company or was it after?

A After.

Q Who did you tell?

A Cynthia.

Q What did you say to her?

A Well, we had lots of discussions and e-mails during that period of time that we discussed lots of different things, and I believe I sent her an e-mail and said, I've got a couple of things I'd like to discuss with you, and that was one of them. And I think what I said is that we received a settlement.

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At that point in time, I wasn't allowed to talk to Mr. Morse, and I asked her to relay to him that I still felt I wanted to share something. I would have to pay it over a period of time, but I still wanted to do it.

Q Why did you feel you wanted to share something?

A He's been a good customer for a long time. He got some of the negative publicity that we got, and I just felt that's what I wanted to do. That's -- that's what I do.

Q Was it related at all to the fact that it was his aircraft that was at issue in the SportsFlight case?

A Well, sure, his aircraft was -- that's why we got negative publicity, his was one of the aircraft.

Q Did you offer to share the proceeds of the SportsFlight settlement with any of the other owners of any of the other aircraft that were used by SportsFlight?

A Well, I guess you have to understand that from the beginning we tried to use his airplane as much as we could. As a result of doing that, his airplane was exposed to that type of tracking more

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than others, so.

Q Did you offer to share the proceeds of the SportsFlight lawsuit with any owners other than Assembly Point?

A I did not.

Q I'm going to show you a document that's been marked as Plaintiff's Exhibit 12 for your deposition today.

(The document was handed to the witness, and the witness examined the document.)

Q It's an e-mail from Cynthia to you dated January 20th, 2013; is that correct?

A Yes.

Q If you look in the second paragraph, starting the third sentence, it says, "You and I spoke after you filed the lawsuit against SportsFlight to recover money owed under a contract to charter Phil's airplane. You said you were doing this on his behalf, and that you'd just take your usual charter commission (15 percent) out of anything received. That's what you said on the phone late last week: that you knew you owed Phil the money, but you wanted me to ask him to let you pay it over some period of time."

Do you see that?

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A I see that.

Q Do you agree with her statement about your conversation with her?

A No.

Q What do you not agree with?

A Well, it says, "You and I spoke after you filed the lawsuit against SportsFlight to recover money owed under a contract to charter Phil's airplane."

Well, we did have a contract with SportsFlight to fly some government flights. It wasn't specifically on Phil's airplane.

"You said you were doing this on his" -- "You said you were doing this on his behalf." Well, I wasn't. In my mind, I wasn't doing it on his behalf. If I was doing it on his behalf, I certainly would have expected that he would have participated some amount in the \$100,000 that I spent, and that he would have participated in some amount in all of the many discussions that we had with our lawyers for, gosh, two, three, four, five years, and there was none of that.

And then I don't -- "That's what you said on the phone last week." I did say on the phone last

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week that I felt I still wanted to pay Phil some money, and that I would want to do it and tell him that I'll do it, and I want to do it over a period of time. I did say that. If she's referring to the fact that -- to that I agreed on the commission, that part of it is not correct, but I did -- I did say that I still wanted to pay him some money and that it would need to be over a period of time.

The last sentence in that paragraph about how to get the money and the comment that they'd probably be squirreled away, I recall that because everybody, including Cynthia and Dave and my employees and I think even the lawyers were under the impression that there wasn't going to be any money, and I guess my assumption at that was, well, nobody is interested because nobody thinks we're going to get any money. That's what my thought was.

(The witness examined the document.)

Q So did you call Cynthia back and tell her that you disagreed with her characterization of this conversation?

A We either had discussion on the phone or discussion on e-mail. I -- we had a lot of -- there was a lot of conversation during that period of time.

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I don't recall exactly when and how it was.

Q When you received this e-mail, did you respond to her characterization of your conversations?

A I believe I did.

Q How did you respond?

A I believe there's an e-mail that I sent that maybe there was a question about, well, if it wasn't 85/15, how did you -- how did you -- what was your thinking of how you would determine what amount you wanted to share, and I think I stated something in an e-mail: Well, here's one of the ways that I might have gone.

Q With respect to this particular e-mail, though, you didn't e-mail her back and tell her she was all wet about what you had said to her?

MR. RYAN: Objection to form.

Q I can substitute incorrect for all wet.

A I was going to say, I don't generally tell anybody that they're all wet. Everybody has their own opinion.

Q Did you respond to her in an e-mail saying her characterization of your conversation was incorrect?

A Well, my response in -- in how I said I might

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calculate it is the same as saying this is how I think I would have done it. I wouldn't have done it 85/15.

Q You didn't tell her though that she was not recalling the conversation correctly?

A I don't remember, don't remember.

Q All right. Let's take a look at Exhibit Number 13 for your deposition today, which is an e-mail from Cynthia to you dated January 22nd, 2013; is that correct?

(The document was handed to the witness, and the witness examined the document.)

A Yes.

Q It says in the second sentence, "When we've spoken, we've talked about this as charter revenue of which, after legal fees, Richmor would take its customary 15 percent of." Is that true?

A I'm sorry. Say that again for me.

Q Is that sentence true?

A What sentence?

Q "When we've spoken, we've talked about this as charter revenue of which, after legal fees, Richmor would take its customary 15 percent of."

A No, I never recall that.

Q Did you respond to her e-mail and say, no, I

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never recall that?

A My response was how I may have calculated what the amount would be.

Q The amount of your gift?

A Yes.

Q But you didn't say that she mischaracterized your conversations?

A I may have done that during the actual conversation, but I don't remember every word that I -- I just don't remember every word.

Q You're not aware of an e-mail response to this saying you're not remembering our conversations, correct?

A I remember an e-mail response outlining how I may have calculated the gift.

Q I'm going to show you a document that's been marked Exhibit 14 for your deposition today.

(The document was handed to the witness, and the witness examined the document.)

Q This is an e-mail from you to Mr. Morse dated January 23rd, 2013; is that correct?

A Yes.

Q It's responding to an e-mail from Phil?

A Yes, well, I guess this was an e-mail that I

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sent to Phil saying that I'm available on my cell phone.

Q Right.

A Yeah.

Q And you're --

A And supposedly it's Phil's response to me.

Q Okay. Maybe I can show you another document. We can have it marked if you want.

(The document was handed to the witness, and the witness examined the document.)

Q That appears to be an e-mail from Phil to you dated January 23rd, 2013, at 10:53 a.m. Do you see that?

A Um-hmm.

Q It looks like Mr. Morse had e-mailed you first and said, "Before we talk, you need to answer the questions Cynthia asked you -- how it came to pass that you received the settlement of the lawsuit in August and we only found out about it last week."

Do you see that?

A I see that, yeah. In both of these, right?

Q Right.

A And this is the same thing?

Q Yes. And then you responded with your phone

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number for Phil to give you a call to answer his questions; is that correct?

A That's what it looks like, yeah.

Q All right. And did you have a conversation with Phil?

A I was not allowed to talk to him.

Q Did you attempt to call him?

A Yes, I did.

Q Did you leave him voice mail messages?

A I'm sorry?

Q Did you leave him voice mail messages?

A Yes, I did.

Q Did he return your call at all?

A No, he did not.

Q I'm going to show you a document that's been marked for your deposition as Plaintiff's Exhibit 15.

(The document was handed to the witness, and the witness examined the document.)

Q Was this the communication that you were referring to earlier regarding your offer of a gift to Mr. Morse?

A Yes.

Q If you look at the second paragraph, it says "To come up with a BALLPARK figure I would have

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started with the rate of \$4,600 times 85% minus the operating cost of \$2,500 times the 167 hours would equal \$235,470."

Do you see that?

A I see that.

Q Can you explain for me those calculations?

A It states -- no.

Q Let's start with the hourly rate. Where did you come up with the rate of \$4,600 per hour?

A I guess I thought that that was the flight hour rate that we were being paid from SportsFlight.

Q All right. So that probably should have been 4,900 per hour?

A Yeah, probably.

Q Where did the 85 percent come from?

A Eighty-five percent is the amount that we normally -- that we remit to the owner when we fly the airplane.

Q And what's the operating cost of \$2,500?

A That would be fuel maintenance and engine reserves for the hour that the airplane flies.

Q Wasn't that already paid by Assembly Point?

A No, the airplane didn't fly. These are not -- we -- we pay when -- we pay when we have a

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flight hour on an owner's aircraft. When we have a flight hour on an owner's aircraft, they incur an operating expense, a direct operating expense.

Q The owner does?

A The owner incurs a direct operating expense when the airplane is flown.

Q Why were you backing out the hourly operating cost in this calculation?

A It was just a way of saying, well, let's see now, I haven't given an amount that I want to give him. What's a way of figuring it out? So this is just what came to mind at that time. This is the way I would figure it out.

Q All right. Where is the 167 hours, where does that come from?

A I don't know. I don't know where that -- was 167 the hours that we were paid in the suit?

Q Well, you sued for 2.5 million and settled for 775,000.

A But I thought there were hours that were related to it.

(The witness examined a document.)

A Well, the hours that were originally was 236, and I think the court backed some out?

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MR. RYAN: I don't know.

Q As you sit here today, do you know where you came up with 167 hour figure?

A Well, that's what I'm trying to explain. I thought it was the hours that we had sued for.

Q Well, you sued for 1,800 unused hours.

A No.

Q Minus the hours flown.

A Minus the hours. Okay.

Q Right?

A All right.

MR. RYAN: Well, look at it. Don't let him put words in your mouth.

Q Maybe we could look at it. Do you have the complaint which has the invoice attached to it?

(The document was handed to the witness, and the witness examined the document.)

A Okay.

Q Does that help you determine how the 167 hours was calculated?

A Well, that's what I just said. It says 236.2 hours but my recollection is that the court backed off some of those hours so that the settlement wasn't for 236. It was something less than 236, and

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maybe that's how I came up with the 167.

Q But the judgement itself was much larger than the settlement, correct?

A Yes.

Q So was there any real way to measure the settlement against the judgment amount?

MR. RYAN: Objection.

Q If you know.

A (There was no response.)

Q In other words, was the settlement amount tied to payment for a certain number of hours?

MR. RYAN: Same objection. You can answer, if you know.

Q If you know.

A I think so.

Q You think so?

A Well, it was the hours plus interest. The settlement amount, I believe, included interest.

Q I'm not talking about the judgment amount, the amount the court awarded you.

A Oh, the settlement amount.

Q I'm talking about the amount you ultimately agreed to accept.

A Well, I don't know what -- I don't know

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what --

Q That was just --

A -- that makes up of it. It was just an amount of money.

Q It was just a negotiated number?

A Yeah.

Q You wanted to pay that amount over a period of time; was that correct?

A That's correct.

Q Why was that?

A Because business is slow. Even though I didn't have the money to pay it, I felt that he would -- that I could pay it over a period of time.

Q What did you do with the \$775,000 that had been received in August of 2012?

MR. RYAN: Objection. You can answer.

A It went to the accountant, and he put it in the bank the same way he would any other money.

Q It was placed into Richmor's general operating account?

A Yes, yep.

Q Was any of the proceeds of the lawsuit distributed out to any of the owners of the business?

A No.

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Q Was it used to pay Richmor's general expenses?

A Yes. It would -- it would be used like any other money that was in the company, whether it be to pay salaries or light bills, there was no difference.

Q The last sentence of that e-mail that's in front of you, the January 24, 2013, e-mail says, "I apologize for all of this. I never thought our relationship would end this way."

What do you mean by that?

A In the first place, I didn't think our relationship would end with him deciding to have somebody else manage the airplane, and I found it hard to believe that we were in dispute about something, because for 25 years it was an excellent relationship and we -- we agreed on things.

Q When you say you agreed on things, those were usually oral agreements?

A Normally oral agreements, yeah, but, I mean, we agreed on the contract, too. I guess that's in writing.

Q But did you ever feel a need that you had to have your agreement on things relating to the aircraft in writing, other than the original contract?

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MR. RYAN: Objection. You can answer.

A I didn't feel that, no.

Q And Assembly Point didn't demand that of you?

A No.

Q After this exchange of e-mails about the gift, the plane was then moved to a different operator; is that correct?

A Yes.

Q Was there also a dispute at the end of the relationship about releasing the plane to the Morses?

A There was conversation about whether we should release the plane to the other operator prior to the bills being settled.

Q Did you ultimately release the aircraft to the other operator?

A I did.

Q Had the outstanding bills been paid by Assembly Point at the time that you agreed to release it?

A No.

Q Do you recall meeting with Cynthia and David Gilmour in Massachusetts in early February 2013?

A Yes.

Q What was the purpose of that meeting?

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A The purpose was to discuss the settlement.

Q Okay. And who attended that meeting on behalf of Richmor?

A Myself.

Q Was it just you, Cynthia, and David?

A Yes.

Q Did you take any notes at that meeting?

A No.

Q What did you say to Cynthia and David?

A That's a pretty broad question.

Q As best you can recall.

A I guess some of the conversation would be the same as I indicated in the e-mails, that I felt that I wanted to share some of the proceeds with Phil and that I didn't know what the amount would be.

Q Did they tell you that they believed that you owed 85 percent of the proceeds?

A Yes, they did.

Q What was your response?

A My response was that I didn't agree.

Q And did you tell them why?

A I would guess I told them why.

Q Do you know specifically whether you told them why?

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A I don't know the words, no.

Q How long was the meeting?

A Oh, gosh, I guess maybe an hour, hour and a half.

Q Did you tell them that you didn't believe Richmor owed anything to Assembly Point?

A I -- I could have told them that, yes.

Q Do you recall that specifically?

A No, I don't.

Q Was there any discussion at that meeting of your offer of a gift to Mr. Morse?

A Yes, I believe there was.

Q And what discussion?

A Again, that I felt that I wanted to share something with him, there may have been conversation about paying it over a period of time, the same as there was in the other discussions.

Q Was there any discussion about the calculations of how that gift -- strike that.

Was there any discussion about how you calculated the amount of that gift?

A I don't remember.

Q What was their response to your offer of a gift?

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A I think one of their responses were that if we were talking about \$50,000, it probably wouldn't make sense to go to court. If we're talking about a larger amount, then I guess we'll go to court.

Q After that meeting, was there anything else at that meeting that you can recall? Anything else happen at that meeting that you can recall?

A Not that I recall, no. What do you mean "happen"?

Q Did you talk about anything else other than what you've testified to already?

A I would think that we did, but I don't recall exactly what it was.

Q Did you take any notes at that meeting?

A No.

Q Didn't record it in any way?

A No.

Q After that meeting, did you have any other communications with anybody from Assembly Point?

A I don't think so, no. I wasn't allowed to talk to Mr. Morse, and I don't -- I don't think so. I don't think I talked to Cynthia or Dave after that, I don't think.

Q I'm going to show you a document that's been

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marked as Plaintiff's Exhibit 16 for your deposition today.

(The document was handed to the witness, and the witness examined the document.)

Q This is a copy of a letter that I wrote to you dated February 12th, 2013; is that correct?

A Yes.

Q Did you receive that letter?

A I believe I did.

Q In that letter I asked you to respond to us within seven days; is that correct?

A Yes.

Q Did you respond?

A I don't believe I did.

Q Why not?

MR. RYAN: Object. I'm going to direct him not to answer. It's irrelevant and immaterial. It's not probative of the issues in the lawsuit.

Q You didn't respond to this letter; is that correct?

MR. RYAN: Don't answer the question.

MR. HENRY: Well, I think that's an absolutely improper objection and an improper --

MR. RYAN: Well, my objection I was

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noting with the prior question: It's irrelevant and immaterial, and it's not probative of any of the issues in this lawsuit.

MR. HENRY: Those aren't grounds to direct him not to answer. We're under the federal rules. If you want to assert a privilege, you certainly can.

Q I think he already answered the question anyway: He didn't respond to that letter, correct, is that correct?

MR. RYAN: Did you respond?

THE WITNESS: I did not.

Q In operating Richmor, were there ever any instances, other instances other than SportsFlight, in which Richmor entered into a charter under which hours were guaranteed?

A There may have been on occasion, yes.

Q And can you describe those for me?

A It would be a time when -- when there's a lot of charter activity. Let's say the most recent time might be President's weekend, always busy. We may receive a call from another operator saying, gee, we'd like to reserve your airplane for this day, and we'll pay you for two hours if you let us reserve the

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airplane.

Q Whether it's used or not?

A Whether it's used for not.

Q And what does Richmor do vis-à-vis the owner of the aircraft in those situations where the aircraft is not actually flown?

A I don't remember a time when the airplane wasn't actually flown. As I stated, it only happens at a time when things are very busy. For instance, this President's weekend, we had two airplanes that would fall under that category. Both airplanes flew more than the two hours, so we paid the owner for the hours that we flew.

Q Was there ever any instance in which Richmor was paid for hours that were not flown?

A There may have been.

Q Do you have records that would show you whether that has ever happened?

A If it was fairly recent, we might. See, that's very difficult, because if the airplane flies, then we have a record. If the airplane doesn't fly, then we don't have a record.

Q Well, don't you have an invoice to whoever chartered the aircraft for the unused hours?

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A We may have. If there's a time when the airplane wasn't used, we may have an invoice, yes. As I say, I just -- I don't remember those times because when it's done, it's a busy time and it's normally used.

Q But your answer is you're not sure if that's ever happened?

A I'm not sure if that's ever happened.

Q Do you know of any instance in which a plane was not flown and money was paid over to the owner?

A No.

Q Who at Richmor was responsible for searching for documents in response to our document demands in this litigation?

A There were lots of us that were searching. There wasn't a person that was responsible for doing that. The dispatchers did it. I did it. The billing people in the back room did it. The receptionist at the front desk did it. We spent hours and hours and hours.

Q Do you know if anybody searched your e-mail servers for documents in response to our demands?

A My e-mail server?

Q Yes.

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A No.

Q No you don't know or no they didn't search?

A No, my e-mail servers -- my e-mail wouldn't go back to that period of time.

Q I'm asking if anybody looked on your e-mail servers for documents in response to our discovery demands in this case.

A I think I would have gone through some of the old e-mails, but I generally delete them after they don't apply.

Q All I'm asking is if you've looked.

A Yes.

Q Do you know for a fact that you've looked for e-mails?

A I know for a fact that I looked, yes. And I know that -- I remember that the dispatchers saying that they looked but their comment was that they always delete their stuff. I guess you get too much stuff and you just get rid of it when it doesn't apply.

Q Do you know how far back your e-mails go?

A Mine --

Q I mean your --

A -- mine probably go back to last year.

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Q Does Richmor have any document retention policy?

A Yes.

Q And what is that policy?

A I believe we have to retain our -- most of our documents for seven years.

Q And that's --

A After the seven years, we try to clean stuff out.

Q That's under the FAA regulations or --

A I'm thinking the government, the IRS, maybe.

Q The IRS. Okay.

A As far as the FAA regulations, I think we're required to keep our log books, aircraft log books and entries there. I don't know as far as the work order. Of course, that would be an IRS requirement, so I would say seven years.

Q Do you know how long the FAA requires you to keep the flight records?

A I don't know.

Q How about the maintenance records?

A Well, the maintenance records are permanent. They go with the aircraft. So, all of the maintenance books and records on a particular airplane, when it's

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sold or goes to another operator, are loaded into the airplane and flown with the airplane to the other operator.

Q From the beginning of the aircraft's existence through its life?

A Through delivery, yeah.

Q Are those all paper documents?

A Yeah, boxes and boxes and boxes.

MR. HENRY: If we can take a break for about five minutes. I just want to look at my notes.

(A brief recess occurred.)

BY MR. HENRY:

Q Sir, are you familiar with Richmor's computer system on which it tracks charter flights?

A Yes, a little bit.

Q Is there a name for that system?

A FlightPak.

Q FlightPak?

A FlightPak.

Q Are you familiar with an abbreviation used on that system for GTD?

A No. GTD?

Q GTD.

A No.

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Q Is there any code on that system for guaranteed hours?

A Oh.

MR. RYAN: Objection.

Q If you know?

A I don't know.

Q Who at Richmor operates or maintains that system?

A The people in dispatch are normally the people that put the information into the system.

Q Who are those people?

A Teri Riegel and Malia Keeler, Sharon Marks.

Q Are any of those people related to you?

A Sharon is my daughter.

Q How about Teri and Malia, have they been with Richmor for a long period of time?

A Forever. Malia was fifteen when she started.

Q So is it fair to say that both of them would have been at Richmor back in the 2002-2005 time frame?

A Yes, yes.

Q One final question: Do you know how much Richmor expended in attorney's fees on the State Court litigation against SportsFlight?

A I think it was around 100,000.

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Q Do you have documents that would show how much was actually spent?

MR. QUINN: Off the record.

(Discussion off the record)

MR. HENRY: I have no further questions.

MR. RYAN: We have a few follow-up.

(Deposition Exhibits Numbers 18 through 21 were marked for identification, this date.)

BY MR. RYAN:

Q Mahlon, I'm going to show you what's been marked as Exhibit Number 18. Can you take a look at that.

(The document was handed to the witness, and the witness examined the document.)

A Okay.

Q Can you identify Exhibit 18 for the record, please?

A These are end of the month documentation and bills showing what happened with the aircraft during that particular month.

Q To whom is the invoice addressed?

A Mr. Phillip Morse, Assembly Point Aviation.

Q And does it pertain to a particular aircraft?

A Yes, it pertains to 227 Sierra Victor.

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MAHLON RICHARDS -- Atty. Ryan

Q Is that a Gulfstream IV?

A Yes, it is.

Q And the billing period is what?

A Well, the first bill here is May 31st of '02, and if they're in sequence, the last one is January -- December of '05.

MR. HENRY: I'm going to interpose an objection: I think this is nothing that I inquired about during the course of my examination. You're entitled to ask him clarification questions about my examination but not to obtain his direct testimony on my deposition.

MR. RYAN: Well, like you said, it's the federal rules and it's pretty much free exchange of discovery. I only have a few questions.

MR. HENRY: Sure. Then I'll let you proceed over my objection.

Q What information is contained on Exhibit 18?

A It shows the utilization of the aircraft, all expenses that were paid during the particular month on the aircraft, and revenue for the aircraft.

Q And the total due, there's a total due entry at the bottom?

A Yes.

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Q And that's due who?

A If it's a positive, it's due Richmor Aviation. If it's a credit, it's due Assembly Point Aviation.

Q Now, with regard to Exhibit 19, can you identify that?

(The document was handed to the witness, and the witness examined the document.)

A At the end of the year, our auditor selects some clients to verify what the accounts receivable is from that particular client, requesting that they agree or disagree and send the agreement or disagreement or comments back to the accountant.

Q And Exhibit 19, if I'm correct, contains four pages; am I right?

A Yes.

Q And to whom was this -- well, there's four letters of four different dates; am I correct?

A Yes.

Q And to whom were the four letters sent?

A Assembly Point Aviation.

Q What is the date of each letter?

A January 4, 2012; December 27, 2010; December 30, 2009; January 14, 2008.

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Q And who was Cathy Gilmour, do you know?

A I believe she's the lady in Massachusetts that we send the bills to.

Q Were they acknowledged?

A These were acknowledged, yes.

Q By whom?

A By Cathy Gilmour.

Q Is Ms. Gilmour an employee of Assembly Point, do you know?

A Three were acknowledged by Cathy Gilmour, one was acknowledged by Sarah, which was a lady that was there, I think, prior to Cathy. And, I'm sorry, what was the next question?

Q What does the signature mean?

A It means that they agree with the amount --

MR. HENRY: Object to the form, but you can go ahead and you can answer.

A -- the amount we say they owe us at that particular time.

Q Now, we've had marked Exhibits 20 and 21. I just want to make sure that I have them correctly.

(The documents were handed to the witness, and the witness examined the documents.)

Q One other question on 19: James Valachovic,

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is he still --

A He's our chief financial officer who actually sends the letter out.

Q Is he still employed by Richmor?

A Yes.

Q How long has he been an employee there?

A I would guess 25 years.

Q We had two exhibits marked 20 and 21. Why don't we start with 20. Can you identify Exhibit 20 for us?

A It shows the -- when the aircraft -- when the Assembly Point aircraft was used, in the first page and a half, by Assembly Point Aviation. So it shows 166 days during this period of time that it was used by Assembly Point Aviation.

Q Who prepared this two-page document?

A I got the information and one of my people typed it up.

Q What's the significance, if any, to the 166 days on the second page?

A Well, that's 166 days that the airplane was not available to support the SportsFlight contract.

Q On the bottom of that is charter trips?

A That's 26 days, which again, where the

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airplane was doing something other than standing by for SportsFlight.

Q Now Exhibit 21, what is that?

A These are the days that the aircraft was out of service for maintenance, so it's 104 days where the airplane was getting maintenance done to it.

Q What is the significance, if any, to the 104 days?

A Well, it's not available to fly if it's torn apart for maintenance.

Q Same question with regard to Exhibit 20 with respect to the charter trips of 26: What is the significance, if any, of that?

A It wouldn't be available to support the SportsFlight activity.

Q Now we also had marked here as one of Mr. Henry's exhibits -- if I can find it.

MR. RYAN: We had this marked today, right?

MR. QUINN: No, that was marked at Cynthia's deposition.

Q Today we had marked Plaintiff's Exhibit Number 3 for identification, and you recall that you were asked questions by Mr. Henry about the aircraft

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lease agreement; am I correct?

A Yes.

Q You were asked about certain sections within the agreement, and I'm calling your attention to Section 2.2(c) where it reads, "Minimum usage by Air Services Provider."

Did I read that correctly?

A Yes.

Q The air services provider is Richmor Aviation according to the terms of Exhibit 3; am I correct?

A Yes.

Q For the record, "Nothing contained herein shall obligate Air Services Provider to any minimum usage of the Aircraft, it being understood and agreed that Air Services Provider's usage shall be on an "as-needed" and "as-available" basis;".

Did I read that correctly?

A Yes.

Q What, if anything, is the significance of that language?

A That we're not required to fly the airplane a certain number of hours, and that we shall use it on an as-needed, as-available basis, so we can use it if we need it, if it's available, but we're not required

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to fly it a certain number of hours.

MR. RYAN: I'm just going to take a minute.

(A brief recess occurred.)

MR. RYAN: I just have a few more.

BY MR. RYAN:

Q Let's just deal with the first page of number 18. That's an invoice for the period dated May 31, 2002; am I correct?

A Yes.

Q All right. And there are entries that start with aircraft wash and clean and end with wireless communication; am I correct?

A Yes.

Q Now, in between those there were several entries. What are they?

A Well, the next one is the crew cost, would be the salary, benefits, and the administration fee for the crew that was assigned to the airplane. In this case, I believe it's three pilots. The current month's trip expenses would be the trip expenses associated with Assembly Point Aviation's use of the airplane, I believe. Federal excise tax credit, when you charter an airplane, you pay a tax on the charter

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rate, so you are reimbursed for part of the federal excise tax on the fuel that you purchase.

Flight attendant fees would be a flight attendant that we used on one of the flights. Flight phone, for flight services. Flight safety would be for training. Hangar rent would be for hangaring the aircraft. Insurance surcharge, at one point the insurance bills were quite high, so we tried to get some of it back by an insurance surcharge to the charter customer.

Maintenance would be work that we did on the aircraft. Management fee is our fee for managing the whole process of taking care of the aircraft. Miscellaneous aircraft supplies, the miscellaneous expenses are -- are expenses that we pay during the month and are passing along to the owner of the aircraft. On the road fuel would be fuel that we purchased while we were flying the airplane on a particular trip.

Prior month's trip expense would be an expense that Assembly Point Aviation had on one of their trips where the bill came in later on. The revenue would have been the revenue for hours that we flew on the airplane. Richmor fuel is fuel that we

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put into the airplane at one of our home bases. Trade hour would be a charge for time that was used on our other airplanes, and then the wireless communications is for phone charges, probably aircraft phone charges or cell phone phone charges.

Q Now I note in the final column -- there's a column to the far right on Exhibit 18; am I correct?

A To the right, yes.

Q Yes, and some of them have -- they're all numbers; am I correct?

Right here (indicating).

A Yes. They all have amounts, yep.

Q All right. And some amounts have parentheses around them. What do those mean?

A Those are credits.

Q Credits to whom?

A Credits to Assembly Point Aviation.

Q What is the significance of the credits?

A It would be money that we were paying them for the -- for flying their airplane or for excise tax that we were going to get back later on. We credit them to them each month, although we don't get it back until later on. The insurance surcharge, as I say, we would charge the charter customer an hourly insurance

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rate and we would pay that back to Assembly Point, and then the revenue would be the revenue for the flight hours that we flew.

Q What is the significance of a deposit of \$27,906.77 at the bottom?

A Oh, that's the amount -- after you add up and subtract all these figures, that's the amount that is due to Richmor from Assembly Point. It's the difference between the debits and the credits.

Q And I note on the third page that's a credit due Assembly Point; am I correct?

A Yes.

Q For \$23,063.05?

A Yes.

Q Okay. Now, on your direct examination you were asked some questions about the crew. Can you explain, just for the record, what crew costs are?

A Crew costs that we bill the customer is for the crew's salary, for their benefits, and for the administration cost.

Q For the period of time in question here, were there crew costs for which Richmor did not seek reimbursement from Assembly Point?

MR. HENRY: Object to the form. If you

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can tell me what time period you're asking.

Q From 2002 through and including 2005.

A Okay.

Q Were there crew costs for which Richmor did not seek reimbursement from Assembly Point?

A Yes.

Q Explain how that came about.

A Well, there would be a lot of different scenarios. Let's say that we had a mission for SportsFlight to go fly wherever and it required three crew members. We'd send the airplane out with those crew members, and sometimes the airplane would come back after a long hard flight for many days and the next day the owner would want to use the airplane. We were not able to use the same pilots for that next activity, so we would just take some pilots from our pool of pilots and fly the flight.

I don't believe we charged for any of those. I believe the only charges that we made for other pilots would be if one of those pilots we had to rent from the outside, we might pass that charge along. Other times, the requirement of the SportsFlight contract was that we had to have people on call 24 hours a day seven days a week.

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We tried to use the Assembly Point Aviation aircraft just as much as we possibly could. You can't have pilots on call 24 hours a day and still be able to go out and fly these missions at any point in time with a crew that's been on call. So as I mentioned previously, during the course of this contract, we used nineteen different pilots on this airplane. We certainly didn't come close to collecting the time that was devoted by crew members.

MR. RYAN: Thank you. I don't have anything else.

MR. HENRY: I have a couple of follow-up.

BY MR. HENRY:

Q Do you have the Exhibit 18 in front of you, which is the invoices that you were just testifying about?

A Yes.

Q The tail number that's indicated on the first page, what's the tail number there?

A 227 Sierra Victor.

Q Was that the tail number in May of 2002?

A I don't know. I assume.

Q That was not the tail number in May of 2002, correct?

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A No, I don't -- I don't know when it was changed. You mean from 85 Victor Mike to 227 Sierra Victor?

Q That's correct.

A Yeah.

Q That's the incorrect tail number?

A Yes.

Q In May of 2002, would Richmor have had any way of knowing if the tail number was changed what it would be?

A No.

Q So, was this document created in 2002?

A This document was created in 2002, yes.

Q And so the tail number, Richmor knew when it created this document what the tail number was going to be?

A No. We were asked to go back and find whatever information that we could find on the operation of the airplane.

Q Okay.

A I'm not a bookkeeper. I don't work in the back, so I don't know for sure, but I know that the information, the paper information I believe, had been discarded because of the time period. I think what

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Kathy did was go back into the computer and pull out the monthly invoices. I'd have to go back to her and find out.

Q Who is Cathy?

A Cathy is a lady.

Q What's her last name?

MR. QUINN: Gallo.

A Gallo. I'm sorry. She's been with us a long time too.

Q Do you have Exhibit Number 3 in front of you, which was the lease agreement? I have the wrong exhibit. It's the aircraft pilot and maintenance agreement.

The rate for the flight crew under Assembly Point's pilot and maintenance agreement was \$29,815 per month; is that correct?

A Yes.

Q These invoices reflect that more than that amount was charged to Assembly Point. For example, if you look at an invoice dated February 17th, 2005, which is Defendant's 18579 on the bottom --

A What was it?

MR. RYAN: 18579.

Q 18579.

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MR. RYAN: Right, John?

MR. HENRY: That's correct.

A Okay.

Q That's different than the rate that's specified in the pilot and maintenance agreement, correct?

A Yes, it is; that's correct.

Q Was there a written agreement increasing that rate?

A Other than the bill, I would say no.

Q You charged that additional rate and Assembly Point paid it, correct?

A Yes, they did.

Q The same for the hangar rent: The rent under the maintenance and pilot agreement was \$4,200 per month, correct?

A Correct.

Q And these invoices reflect that that rent went up to \$7,000 per month?

A Correct.

MR. RYAN: Well, where is that?

Q For example, Defendant's 18581, which is an invoice dated April 20th, 2005; is that correct?

A That's correct. That's after they requested

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that the aircraft be moved out of the state.

Q Was there a written agreement amending the pilot and maintenance agreement to provide for that increased rent?

A Just the bill.

Q Just the bill which Assembly Point paid?

A Which they agreed to and paid, yes.

Q All right. Do you have Exhibit Number 19 in front of you, which was the one that your counsel had just asked you some questions about.

These are the audit documents that you were testifying about where Richmor would send information to Assembly Point, information for verification of amounts owed; is that correct?

A That's correct.

Q The latest one of these is January 4, 2012, correct?

A Yes.

Q At that point, had Richmor received any settlement funds from SportsFlight Air?

A No, no.

Q You were asked some questions about Exhibits Numbers 20 and 21. Who prepared Exhibit Number 20?

A I determined the days and the typing was done

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by somebody else.

Q When did you do that?

A Sometime after this proceeding. I don't know what the date is.

Q It was sometime after this litigation, this litigation meaning Assembly Point's litigation --

A Yes.

Q -- was commenced against Richmor?

A Yes.

Q Was that at direction of your counsel, without getting into the details of any conversations?

A No.

Q Was this prepared in order to respond to the allegations made in this lawsuit?

A It was mostly prepared for my benefit. As I got into this activity, I wondered myself what we had done with the aircraft during that period of time, because I knew that there was many, many flights by Mr. Morse, and I just wanted to see for my own benefit how many days the airplane wasn't available.

Q So this document was prepared at least in 2013 or later, because that's after the lawsuit was commenced, is that fair to say?

A That's fair to say.

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Q And it reflects transactions that took place eleven years or so earlier starting in 2002?

A Well, the dates are 2002 through 2005.

Q So it obviously wasn't prepared in 2002 to 2005, the document itself?

A This document itself?

Q Yes.

A No, the material that I got it from was prepared as it happened.

Q What did you use to determine the number of days, what records?

A I used the flight record information. What it is, when we do a flight, we keep -- the pilots are required to keep track of it on their flight log. At the end of the flight, they turn that flight log in to billing and operations. The lady in operations is required to put the information into the part of FlightPak that's called postflight. There's a preflight and there's a postflight.

They don't -- they aren't always the same because customers change their minds. So she puts it into postflight and then it's retained. If you want to go back and see what happened on the airplane, you can just go into postflight and it will show you.

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That's where I got the information from.

Q What did you physically do to compile the number of days? Did you look in the computer system? Did you look on paper records?

A I printed it out and I looked at the paper. It was too hard for me to take it off the screen, so I printed out this period of time, which I think is an exhibit, I think, and I went by -- I mean, it tells everything that happened with the airplane, what day and when they took off from where and where they went.

Q Okay. And similar questions for Exhibit Number 21. It says maintenance date and number of days. Is this also a document that you prepared after this litigation was commenced?

A Yes.

Q What did you look at to compile this information?

A The same, the documents that I looked at to prepare the Exhibit 20.

Q So those documents would also show when the plane was in for maintenance?

A Yes, because everybody that's scheduling or doing something with the aircraft needs to know what's going to happen with it and when it's needed for a

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certain thing. We can't schedule maintenance on the airplane and then find out that dispatch scheduled a flight on it.

Q Is there some sort of code that indicates maintenance for the day, that it's in maintenance for the day?

A I think it says M something. I don't know what it...

Q Well, when you prepared this sheet, did you know?

A That's why I say I think it says. I don't know if it's M-T something or M-A-I-N, but it indicates that the aircraft is in maintenance. I could look at one of the things and show you.

Q You were asked some questions about pilot charges. Is it fair to say that the pilots that were assigned to this aircraft and paid for by Assembly Point flew flights for SportsFlight?

A They did fly flights for SportsFlight, yes.

Q Was that the majority of the pilots? The majority of the pilot time, was that flown by the pilots assigned to this aircraft?

A I can't answer that without looking at the postflight.

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Q Now, you did that, you looked at the documents in order to compile Exhibits 20 and 21 --

A Yes.

Q -- but you haven't looked at whose pilots actually flew the planes?

A Not at relation to what particular flight was flown by what particular crew, no.

Q Is there any preference in the aviation world to have the pilots who are assigned to an aircraft be the first or the primary pilots to do the flights?

A They would normally do the -- if they're assigned to the aircraft, they would normally fly the aircraft if they were available.

Q Okay. Fair enough. The maintenance days that are reflected on your Exhibit Number 21, how did those maintenance days compare to any other G-IV, was that a high level of maintenance days, a low level?

MR. RYAN: Based upon his experience or on the time frame indicated here or --

MR. HENRY: Sure.

MR. RYAN: Okay. Let's start with the time frame here. Do you know?

A Typically we try to accumulate inspections on an airplane so we don't have to take it down a lot of

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times. So normally, once a year, we take an airplane down for three to five weeks and try to get as much done as we can so that the rest of the time it's not out of service for a long period of time and it's more available. So I would think based on 2003, 2004 the 30 days and the 24 days are very, very -- probably less than what you would see on some airplanes.

Q When Richmor entered into the contract with SportsFlight, you would have had some anticipation that this plane wasn't going to be available due to maintenance issues for certain periods of time; is that correct?

A That's correct. That's correct, and that's why we knew, right from the beginning, that we were going to need to use other aircraft.

Q But, again, when those other aircraft were used, SportsFlight actually paid for those hours?

A Yes, they did.

MR. HENRY: I have nothing further.

MR. RYAN: Nor do we.

(Whereupon, at 2:39 p.m. the examination of Mahlon Richards in the above-entitled matter was concluded.)

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STATE OF NEW YORK

SS:

COUNTY OF

I, MAHLON RICHARDS, having been duly sworn, do hereby certify that the foregoing typewritten transcript of my testimony, with corrections, if any, constitutes a true, full and accurate transcript of the testimony given by me in the above-entitled action.

Mahlon Richards
MAHLON RICHARDS

Sworn to before me this 9th
day of April, 2014.

Sharon B. Richards
NOTARY PUBLIC

My Comm. Expires July 25, 2014
SHARON B. RICHARDS
State of New York Reg. #018493890
Qualified in Columbia County

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CERTIFICATION

I, LAUREL STEPHENSON, a Court Reporter and Notary Public in and for the State of New York, do hereby certify that the foregoing record taken by me at the time and place as noted in the heading hereof is a true and accurate transcript of same, to the best of my ability and belief.

Laurel Stephenson
Laurel Stephenson

Date: MAR 11 2014

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ERRATA SHEET

Please note any error and/or corrections thereof on this sheet. The rules require a reason for any change or correction. It may be general; such as, "to correct stenographic error," or "to clarify the record," or "to conform with the facts."

CASE: Assembly Point Aviation, Inc. v Richmor Aviation, Inc. (Case No.: 1:13-cv-0298)

DEPOSITION OF: MAHLON RICHARDS DATE OF DEPOSITION: 2-27-2014

I, Mahlon Richards, do hereby certify that the following corrections and additions are true and accurate to the best of my knowledge and belief.

PAGE	LINE	CORRECTION	REASON FOR CHANGE
19	22	Add "generally" between "is" and "the"	To clarify the record.
20	5	Add "in terms of general structure" after "It's"	To clarify the record.
20	8	Add at end: ", but Assembly Point reviewed it, had attorneys, and had an opportunity to make objections and changes"	To clarify the record.
20	16	Add "generally" after "Yes"	To clarify the record.
21	23	Add "Not sure what you mean regarding charters. Yes, generally for expenses, to the extent Assembly Point was billed and paid for any of them"	To clarify the record.
22	2	Add ", generally, to the extent Assembly Point was billed and paid for any of them" after "Yes"	To clarify the record.
22	4	Add ", generally, to the extent Assembly Point was billed and paid for any of it" after "Yes"	To clarify the record.
22	6	Add ", generally, to the extent Assembly Point was billed and paid for any of it" after "Yes"	To clarify the record.
23	3	Add ", generally, to the extent Assembly Point was billed and paid for any of it" after "Yes"	To clarify the record.
23	5	Add ", generally, to the extent Assembly Point was billed and paid for any of them" after "Yes"	To clarify the record.
23	8	Add ", generally, to the extent Assembly Point was billed and paid for any of it" after "Yes"	To clarify the record.
23	18	Add at end: "or a customer, generally speaking"	To clarify the record.
23	21	Add at end: ", if Assembly Point was billed for them. In addition, customers also paid expenses."	To clarify the record.
23	23	Add "although I would have to review the records to answer this question" after "paid"	To clarify the record.

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24	19	Add "generally" before "passed"	To clarify the record.
26	8	Add "to the extent they were billed and paid for any of them" after "yes"	To clarify the record.
27	6	Add ", generally, to the extent they were billed and paid for any of them" after "Yes"	To clarify the record.
27	11	Add "Although I would have to check the records, generally" before "The arrangement"	To clarify the record.
29	8	Add at end: "regarding the second question. There were written invoices paid by Assembly Point that reflect changes agreed to by the parties"	To clarify the record.
30	5	Add at end: "although there were written invoices paid by Assembly Point that reflect changes agreed to by the parties"	To clarify the record.
30	7	Add at end: "and through the submission of invoices paid by Assembly Point"	To clarify the record.
31	25	Add ", although the parties appear to have changed the standard terms" after "Yes"	To clarify the record.
33	8	Add at end: ", it is possible, but I would need to review the records to respond."	To clarify the record.
38	11	Add at end: ", you could say that Richmor received money from Sportsflight, although it was not for this airplane not flying. It was for Richmor's lawsuit and for Sportsflight not flying enough hours on Richmor's fleet of Gulfstreams, among other things."	To clarify the record.
39	6	Add at end: ", possibly, I assume"	To clarify the record.
39	10	Add "as to the general form" after "correct"	To clarify the record.
39	14	Add ", as to the general form, I assume" after "Yes"	To clarify the record.
40	5	Add ", in general" after "Yes"	To clarify the record.
47	7	Add ", although I direct you to the account statements between the parties for whatever period of time you are referring to" after "No"	To clarify the record.
50	16	Add at end: ", I don't think so, not to merely charter in general, although the invoice packets and accountings reflected the parties' terms and bargain."	To clarify the record.
50	25	Add after "no": ", although Assembly Point was provided invoice packets and paid bills, and Richmor would have required written consent to obligate Richmor to pay for any hours not flown, to share settlement proceeds, or to otherwise modify the material terms of the parties' bargain in the manner suggested by Assembly Point in this action"	To clarify the record.

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61	21	Add at end: "because we had to be available 24/7, not to accommodate Assembly Point as you suggest."	To clarify the record.
62	2	Add at end: "The government required transportation 24/7. Assembly Point had the opportunity to receive payment for only the actual hours flown."	To clarify the record.
62	14	Add at end: "and no. The initial written contract was a charter for N85VM, any substantially similar aircraft, and any suitable backup aircraft. Sportsflight and Richmor further used additional aircraft after the initial written contract and agreed upon different rates for such aircraft."	To clarify the record.
62	16	Add at end: ", but only the N85VM. Assembly Point did not own any of the other aircraft used to fly the missions."	To clarify the record.
62	23	Change "our" to "Richmor's" and "Assembly Point" to "Sportsflight"	To clarify the record.
63	2	Add after "Air": "The contract for the 50 hours per month was between Richmor and Sportsflight. Assembly Point was not a party to the Richmor-Sportsflight contract"	To clarify the record.
64	16	Add at end: "There were also no "hours not flown on the aircraft." Assembly Point did not receive a guarantee for any minimum usage of its airplane."	To clarify the record.
64	21	Add at end: "guarantee Richmor (not Assembly Point) a minimum number of hours of flight time"	To clarify the record.
65	9	Add ", and we used other aircraft as discussed at trial during the state court proceedings" after "airplanes"	To clarify the record.
69	24	Add at end: "there was oral consent, although I direct you to the account statements between the parties for whatever period of time you are referring to."	To clarify the record.
75	6	Add ", and you should review the record on appeal and our discovery materials provided to date" after "Okay"	To clarify the record.
85	12	Change "Yes" to: "You are correct in saying that the cover letter references Assembly Point's airplane, but this was not a bill for unused hours on Assembly Point's airplane in the way you suggest. The bill was for the unused hours on the Sportsflight contract to which other airplanes were used and Assembly Point was not a party."	To clarify the record, to conform to the facts, and to prevent opposing counsel from taking my words out of context.
89	10	Add at end of the sentence ", as well as other airplanes."	To clarify the record.
89	13	Add at end of the sentence ", as well as other airplanes."	To clarify the record.
94	10	Add at end: "Actually, no, we were suing on the Sportsflight contract. The invoice was attached as part of the account stated claim we didn't recover on."	To clarify the record.

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107	6	Add at end of sentence: ", and also through performance and invoicing, with whatever modifications that went along with it."	To clarify the record.
109	5	Add at end: "although you are not correct in suggested that Assembly Point's airplane was a material term of this contract and that only its airplane could be used or not used."	To clarify the record.
112	19	Add at end of sentence ", although I would direct you to the state court decisions on that issue"	To clarify the record.
112	21	Add at end of sentence "and through performance and invoicing"	To clarify the record.
112	24	Add at end of sentence ", although I am not saying that all of the terms from the written contract were the same"	To clarify the record.
113	5	Add ", meaning those limited transcript lines that you were referring to" after "there"	To clarify the record.
113	11	Add at the end of the sentence: ", as well as through performance and invoicing"	To clarify the record.
127	7	Add after "Well," "basically everything. For example,"	To clarify the record.
134	15	Add at end: ", but not sure"	To clarify the record.
138	10	Add at end: ", I was thinking about paying the amount referenced in the subject email"	To clarify the record.
139	22	Add "and there is also the submission of invoices and payments of invoices by Assembly Point"	To clarify the record.
140	3	Add at end, "not for those items that our invoices referenced changes for, but yes absolutely I would have required a signed writing by Richmor if I thought Assembly Point wanted to recover 85% of Richmor's recovery from the state court action"	To clarify the record.
159	2	Add at end, "and we are not required to pay Assembly Point for any minimum number of hours. We are not guaranteeing Assembly Point any minimum revenue or flight time."	To clarify the record.

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Additional Comments: Assembly Point has attempted to take my testimony and the state court documents out of context. I disagree with Assembly Point's interpretation of my testimony and state court documents. I do not agree to permit Assembly Point to use my testimony in the manner they have attempted to rely upon it. For example, contrary to Assembly Point's assertion, the state court litigation and ultimate settlement between Richmor and Sportsflight was NOT explicitly limited in scope to payments earned on Assembly Point's aircraft, pursuant to the Sportsflight contract.

Date: 4/11/14


Mahlon Richards

A STATE OF NEW YORK)
COUNTY OF Columbia)ss:

On the 9th day of April, 2014, before me, the undersigned, a notary public in and for said state, personally appeared MAHLON RICHARDS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

SHARYN R. RICHARDS, NOTARY PUBLIC
State of New York Reg. # 01914938906
Qualified in Columbia County
My Commission Expires July 25, 2017